

**County of Los Angeles Department of Public Works' Comments for
Little Hoover Commission Public Hearing on State Permitting Issues
February 23, 2017**

Introduction

The County of Los Angeles Department of Public Works administers several County functions, including maintenance of County roads and the management of stormwater through the Los Angeles County Flood Control District.

Public Works thanks the Commission for this opportunity to provide information on the challenges Public Works encounters with State regulatory agencies' permit processes and endowment requirements for mitigation areas. Public Works respects and supports the State agencies' environmental protection missions, including those involving water quality and biological resources. In addition to protecting the public's health, safety, water supply and serving their well-being, Public Works' charge to operate, maintain, repair, rehabilitate and enhance its facilities also serves to protect the environment. Well-maintained and functioning infrastructure avoids adverse impacts to water quality and biological resources that result from flooding of heavily urbanized communities, and accidents on the roads. With this in mind, Public Works believes that improved permit processes and realistic mitigation area endowment requirements will benefit the environment.

Here is some background about the Flood Control District and Public Works:

Flood Control District

The Flood Control District was established under the Los Angeles County Flood Control Act, which was adopted by the State Legislature in 1915, after a disastrous regional flood took a heavy toll on lives and property. The Flood Control Act empowered the District to provide flood protection, water conservation, recreation and aesthetic enhancement within its boundaries. The District is governed, as a separate entity, by the County of Los Angeles Board of Supervisors.

The District encompasses almost 2,800 square miles, 85 cities and approximately 2.1 million land parcels. The District has one of the most comprehensive urban flood protection and water conservation systems in the world.

Public Works' ability to maintain and enhance the functionality and capacity of its facilities is critical to its ability to adapt to climate change. There is the concern about the potential for storms arriving with less frequency but also, when they do arrive, delivering more intense rainfall. This can result in a greater potential for flooding and narrower windows for stormwater capture. Rising sea levels from climate change could necessitate re-location of seawater intrusion barriers or portions thereof, which in that case would involve installation of new injection wells.

County Roads

Public Works maintains thousands of miles of roads and hundreds of bridges. It is vital for the public's safety and well-being that the County maintain this infrastructure and, when required, rehabilitate it to meet Federal and State safety standards.

In conclusion, Los Angeles County today is the most populous county in the nation, with more than 10 million residents. County residents are more dependent than ever before on the Flood Control District's facilities and the County's roads and bridges. This infrastructure serves the public's well-being by protecting their health, safety and water supply, and meeting their transportation needs.

Regulatory Issues

Public Works' maintenance activities for its reservoirs, debris basins, channels, and many of its roads and bridges, require water quality permits and streambed alteration agreements (SAAs) from the State. These permits often require compensatory mitigation, including permits for facilities that were not designed to contain habitat, or that impact areas with primarily non-native vegetation. The State agencies are requiring conservation easements over mitigation areas and up-front endowments to provide financial assurances for not only the mitigation work but perpetual maintenance of the habitat values of the mitigation areas.

Permit Processes

Public Works has found the agencies' permit processes very difficult to navigate.

Water Quality Agencies

- There is no definition of "Waters of the State." This makes it very difficult for Public Works to recognize when a project is jurisdictional.
- The water quality permit application forms vary between the State's nine Regional Boards, which the State Water Resources Control Board acknowledges creates a potential for inconsistent application of the State's water quality regulations. Public Works has seen this with the differences between the application forms of the two Regional Boards that regulate within Los Angeles County.
- No comments are received during the public review process for documents prepared under the California Environmental Quality Act (CEQA). Public Works does not know of regulators' water quality concerns until Public Works submits a permit application.

- The information required for a “complete” permit application package is not listed up-front in the agencies’ Permit Application Forms or on their web sites. The information requested in the Permit Application Forms does not cover all of the information required by the agencies to deem an application package “complete.”
- Initial permit application package submittals are always deemed “incomplete.” Subsequent Requests for Information (RFIs) have asked for the following:
 - information not requested in the agency’s Permit Application Form
 - information already contained in the submitted application packages.
- Multiple RFI rounds are often engaged.
- Permit processes often take up to and sometimes more than 1 year, even for simple projects with little impact. For example:
 - A permit for a street bridge widening over a fully-lined concrete channel took over 2.5 years due to multiple rounds of RFIs.
 - The re-issuing of a permit for minor work in a concrete channel took over 9 months with multiple rounds of RFIs. However, there was no change in the scope of the work the agency previously permitted.
- The agencies expend a great deal of effort in regulating fish and wildlife impacts. This appears to be redundant, considering another State agency, California Department of Fish and Wildlife, has already been charged with that task.
- The permit fees are calculated based on either acreage or linear feet, whichever yields the larger dollar amount. Fee amounts have been further increased by including in the “impact area/length” existing access roads or the access path on concrete channel bottoms.

Public Works acknowledges and appreciates the State Water Resources Control Board’s initiative and efforts to develop a uniform Permit Application Form for all Regional Boards to use. Public Works hopes the State Board will also develop uniform procedures that will minimize unnecessary delays. Public Works hopes the procedures will provide greater clarity to applicants as to what information regulatory staff needs to readily understand the proposed projects and their impacts. It is also hoped the procedures will establish a commitment that the agencies will deem applications complete if all information requested by the uniform Permit Application Form has been provided. This is not to say that agency staff cannot ask questions about the proposed project, just that applications will not be deemed incomplete over minor questions or questions about project components that are not impacting Waters of the State.

Public Works believes most of the issues it has encountered at the agencies stem from very limited agency staffing levels. These limited levels persist despite significant increases in permit fees. Public Works has offered to enter into services agreements to provide funding to obtain agency staff to work on Public Works' projects. However, the offers have been declined due to concerns about the appearance of conflicts of interest.

Fish and Wildlife Agencies

Public Works does have a services agreement with California Department of Fish and Wildlife. The goal is to expedite its permit processes and avoid "surprises" between the agency's CEQA document comments and the SAA conditions. The agency's staff is responsive, but the desired benefit on timelines has been offset by a couple of factors. The agency has added conditions and elevated the significance of perceived impacts that Public Works has not seen in its previous SAAs. For example:

- The draft SAAs for a reservoir sediment removal project and a reservoir bottom mowing project require mitigation ratios of 1:1 or greater, even with use of credits from Public Works' mitigation area which has higher habitat than those in the project area being impacted.
- The draft SAA for a project requiring mitigation for impacts to non-native grasses.
- Attempts to reduce mitigation credits at Public Works' mitigation area for the wildfire prevention removal of dead vegetation, even though a wildfire at this location would do even more damage to the habitat.
- The SAA on a dam rehabilitation project requiring the same protections for non-sensitive species as those for sensitive species.
- The SAA for minor work in a concrete channel in an urban neighborhood requiring a nesting mitigation plan. This is despite minimal disturbance in comparison with the potential for disturbance from surrounding existing land uses. The agency previously issued an "Operational Law Letter" for this project due to its minimal impacts.

Additionally, the agency's recent CEQA comments and draft SAAs on water conservation projects have prompted concerns about potential conflicts with Public Works' efforts to: enhance local water supplies; maximize use of recycled water; and become less dependent on imported water. For example:

- The draft SAA for a reservoir sediment removal project contains a condition requiring all flows making their way to the dam be bypassed downstream, even though habitat downstream is minimal and does not require all of the flow.

- CEQA document comments for a spreading grounds improvement project that indicate opposition to channel flows being directed to spreading grounds (or treatment facilities). The comments indicate the agency prefers the water be sent downstream for enhancement of in stream vegetation. However, this would result in losing the water to the ocean.

Coastal Commission

Public Works has also had issues with the Coastal Commission:

- Delays in putting projects on the Commission's meeting schedule. Public Works understands this is due to limited staffing levels at the agency.
- No clear indication of when the agency still claims jurisdiction on projects located within the boundaries of adopted Coastal Plans. Jurisdictional ambiguity on one project extended its permit process by 8 months due to the time it took for the agency to determine it had jurisdiction.

Endowments

Public Works understands that agencies desire stable funding and follow-through for mitigation areas/banks run by private entities that may be vulnerable to funding shortfalls. The Los Angeles County Flood Control District, however, should not be subjected to an endowment requirement for its mitigation areas. The Flood Control District has a very stable source of funding, and not even the Great Recession had a significant impact on the District's funding. In fact, the District has a bond rating of AAA+.

It should be noted that an endowment, once issued to the State, cannot be drawn upon by the District, resulting in a very large amount of public funds being sequestered and serving no public good. Additionally, the District would still have to budget for annual maintenance. The District's budget is thus impacted twice. For example, if California Department of Fish and Wildlife's endowment criteria are applied to the District's Big Tujunga Wash Mitigation Area, an estimated amount of more than \$10 million would be needed. The District would still have to budget over \$250,000 annually for site maintenance.

The issue of endowments for the District is arising from the compensatory mitigation requirements for maintenance of existing infrastructure. Most of the District's compensatory mitigation requirements are for maintenance activities.

Public Works again thanks the Commission for giving us the opportunity to share our experiences with permit process and endowment issues. We hope this information leads to greater environmental benefits. If the Commission has any questions on these comments, it can contact Mr. Christopher Stone, assistant deputy Director of Public Works' Water Resources Division, at (626) 458-6100, or at cstone@dpw.lacounty.gov