County of San Diego

LAND USE AND ENVIRONMENT GROUP

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TO: LUEG Department Heads

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LATE HITS, OR "SECOND BITES OF THE APPLE," ON PRIVATELY-INITIATED LAND DEVELOPMENT PROJECTS

To provide a reasonable level of certainty to customers who are processing land development applications and minimize surprises, it is important for project issues and requirements to be identified early in the review process. When a project issue or requirement is missed during initial project review and caught during subsequent analysis, it is commonly referred to as a "second bite of the apple" or a late hit to the project processing. This typically results in additional costs and schedule delays. There are some late hits that are under the control of the County. For example:

- Reinterpretation of a land use policy that results in project design changes.
- Failure to timely identify project design requirements such as habitat preservation, subdivision layout or trail alignment.
- Failure to appropriately apply current land use regulations such as General Plan policies, road standards, or subdivision requirements.
- Failure to timely identify project impacts to resources or services such as biology, cultural, or fire service.

However, there are other situations where the County cannot control changes that are applied to projects late in the review process. For example:

- New federal, state or local regulations that trigger additional requirements regardless of the status of project review (i.e. listing of a new endangered species, state stormwater regulations).
- New information is provided in response to a staff comment that identifies new impacts.
- Applicant-initiated project changes, which result in new/different impacts.

Ultimately, the County's goal is to identify project issues and requirements at the start of every project so customers have a clear expectation of the project issues, costs and schedule. As

such, the County must strive to minimize late hits to the extent practical and avoid applying additional requirements on customers late in the review process that are within our control.

This policy is intended to first define a late hit, and then establish a process for staff and applicants to follow in the event a late hit is identified.

POLICY

The following shall apply to those departments within the County who review, comment on, and inspect privately-initiated land development projects.

Late Hit Defined

Generally, a late hit is defined as when a project omission, inadequacy, ordinance non-compliance issue, or mitigation requirement that should have been and was not timely raised by the County reviewer, and as a result, additional review or project changes are subsequently required which cause a project delay. Some situations would not be deemed late hits – such as:

- The initial/previous submittal was rejected due to being incomplete or inadequate and therefore did not undergo full staff review;
- There is a change to the project or additional project description detail that has been submitted by the applicant since the initial/previous submittal of the project/document;
- New information was provided in response to a staff comment/document request or other unsolicited changes were made by the applicant since the initial/previous submittal;
- New information is available that could not have been known with the exercise of reasonable diligence by County staff in the initial/previous reviews;
- Changes in applicable legal requirements (i.e. Ordinances, Standards, regulations State Law etc.) that have occurred since the initial/previous submittal, and do not include grandfathering provisions;
- The applicant/consultant provided erroneous or incorrect information or omitted information that was not caught until later in the review process;
- Legal deficiencies identified pursuant to Board Policy I-119; or,
- Changes/additional information requested by the decision-making authority (e.g. Director, Planning Commission, Board of Supervisors).

Process for when a Late Hit is identified

If during the processing, design or construction of a land development project staff identifies a new project omission, inadequacy, ordinance non-compliance issue, or mitigation requirement that qualifies as a late hit as defined in this policy, they are instructed to immediately advise their manager. Both the staff and manager must bring the matter to the attention of the Director of Planning & Development Services for discussion and ultimate resolution.

Special attention will be given to those situations where ignoring the late hit will result in health and safety issues such as an unsafe road design, improper septic disposal, or a trail alignment that is located in an unstable or dangerous area. In such cases, the Director of Planning and

Development Services will discuss the issue with the department director that has maintenance responsibility of the improvement for discussion and agreed upon resolution.

Ultimately, the purpose of this policy is to raise awareness of when a late hit is identified so that executive management can consider the situation and make a determination on the best course of action for the applicant, County and general public.

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