

TOP STORY

PPPA qualifies 100 local companies for \$750M school-modernization project page 2

INSIDE

Special Coverage

Starwood CEO Frits van Paasschen ushers a new era in hospitality page 42

Oriental Financial Group president & CEO touts appointment of former Santander Puerto Rico Chief José Ramón González page 10

SGR Milcom Ponce opens first manufacturing plant at Port of the Americas page 29

SPECIAL FEATURE



Planning Board President Héctor Morales

Long-awaited New Permits Process to be operational by midyear 2011

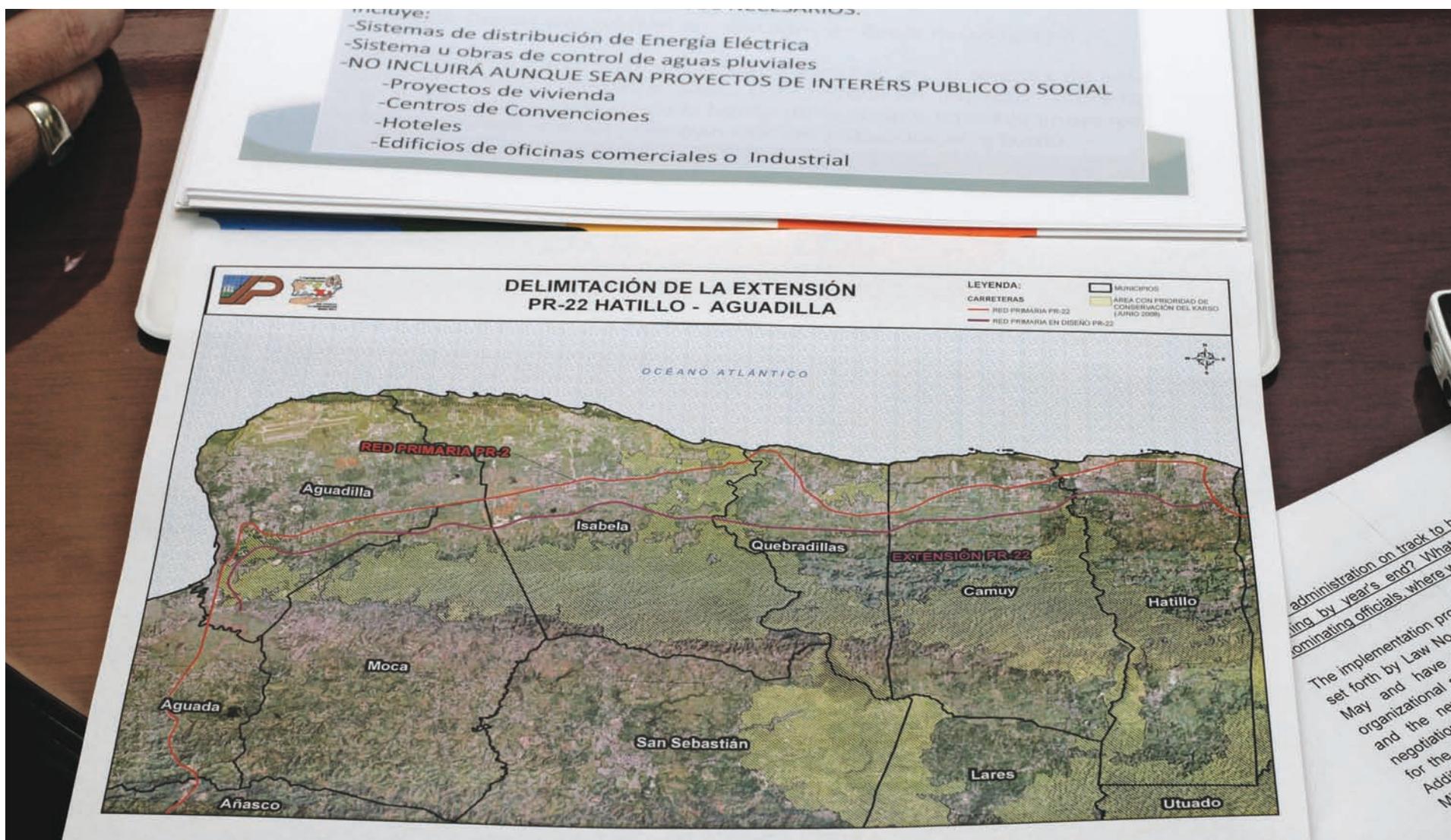
By John Marino pages 16-21



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Permits reform to bring 'complete transparency'

Initiative will be the largest and most concrete example of how officials say they are transforming government for the benefit of business and citizens



BY JOHN MARINO
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Top Fortuño administration officials say they are on track for a December debut of the new permitting system that has the lofty goal of transforming Puerto Rico into one of the most convenient and transparent places in the world to do business from its current status as one of the most bureaucratic and uncertain.

Just as importantly, they say, the new Integrated Permits System will be the most prominent example yet

of how officials say the administration is reshaping government into a “customer-centric” entity, which will make all sorts of government services and products easier to access for everyday citizens as well as for island businesses. The administration’s stated aim is to eliminate the need to brave long lines and lose valuable, productive time in undertaking these most often compulsory activities.

The permitting reform, contained in the Puerto Rico Permits Process Reform Act, is the first of several

administration initiatives to take root that are aimed at improving the business environment in Puerto Rico.

Meanwhile, tax and labor reforms, which will address other longstanding obstacles to business in Puerto Rico, are also on the horizon.

The permitting problem is the No. 1 most problematic factor for doing business in Puerto Rico, according to the “Global Competitiveness Report” (2008-2009) by the World Economic Forum. The island came in 144th out of 181 destinations

analyzed for a World Bank Group report on permits, dragging down the island’s overall competitiveness ranking. When the Fortuño administration took office, it faced a backlog of 4,900 projects worth \$12 billion pending approval at the Planning Board and the Regulations & Permits Administration (ARPE by its Spanish acronym).

Administration officials say, however, that it was not just the severity of the permitting problem, but

Continued from previous page

also the fact that the permitting process exemplified so much of what is wrong with how the government conducts business that led to the decision to tackle the problem first. And the benefits of this permits reform will be just part of the wider returns that will be reaped by the public at large as the government changes the way it undertakes transactions across the board.

“This is the way government is going to operate. We will be customer-centric as opposed to being government-centric,” said Government Chief Information Officer Juan Eugenio Rodríguez, who is playing a key role in the administration’s government-reform efforts. “If you look at the bigger picture of government modernization, this new permits process is the best example of how this administration believes government should run. In this project, we have a number of different areas of work that converge in a very meaningful way.”

Gov. Luis Fortuño is expected to name within two weeks the key players who will oversee the new permitting system. These nominations will include the OGPe executive director, the new permits inspector general and the members of the review board, which will review initial government permit decisions.

CARIBBEAN BUSINESS sources say current ARPE administrator Jorge García Faneyett is a strong candidate to head the new OGPe office, while Planning Board associate member Jennifer Mayo is one of the officials under consideration to fill the permits inspector general post. Mayo has been serving in that role on an interim basis throughout the permits implementation process.

Once it is established in December, however, the new permitting system will be the most fully realized of the administration’s government-reform initiatives.

“We are putting our money where our mouths are in terms of implementing a lot of the initiatives that have been ongoing for the past year. We are ensuring the organization, the processes and the technology employed in the new system all respond to the original vision of permits reform,” said Edward F. Calvesbert



“The two components of compliance are accessibility and simplicity to do the right thing, and then accountability and enforcement. So obviously we are doing both. We are lowering the bar to make it easier for people to apply for permits, and we are raising the bar by increasing penalties.”

—Planning Board President
Héctor Morales

Juliá, deputy Economic Development & Commerce secretary, who has worked on the permits project from the beginning, playing a role in the drafting of the legislation as well as its implementation.

Rodríguez said the permits overhaul, just like the other reforms that are pushing for more government services online, has required the re-

engineering of processes, the full and appropriate use of technology and a customer focus on the citizen or organization that needs to conduct business with the government. It has required solutions from beyond the customary framework of separate government agencies and driven by the need for agencies to consolidate and integrate functions and share services and innovation opportunities.

The permits reform is particularly difficult to pull off because it involves four main government entities, hundreds of employees and the need to consolidate rules and processes spread out across more than 30 different government agencies, Calvesbert Juliá added.

“We are establishing three new agencies and adding a fourth to the permitting process, but we are really consolidating more than 30 different pieces in almost as many agencies into these four new entities. It’s a picture of good, efficient government,” Rodríguez said.

A NEW HOME FOR A NEW AGENCY

The most obvious sign there will be a changed way of obtaining permits come December is the elimination of the Regulations and Permits Administration (ARPE) and its replacement by the new *Oficina de Gerencia de Permisos y Endosos* (OGPe), or the Permits & Endorsements Management Office (PEMO).

Officials say ARPE’s 300-plus current staff won’t see any layoffs, but will be transferred into new roles at OGPe, as well as a related entity that will provide compliance oversight of the permits process.

OGPe’s new headquarters will house a large customer service center on the ground floor of the north tower of the Minillas Government Center. Its design, with open spaces and glass, will reflect the “transparency” officials say will be brought to the new permitting process. While officials analyzed several different locations, they settled on Minillas because of a Public Buildings Authority (PBA) initiative to remake the sprawling, inefficient symbol of bureaucracy into a new showcase of both environmentally friendly technology and the most advanced computer and communications equipment and services, and for how

government agencies can share everything from conference rooms to fiber-optic cables to improve service and cut costs.

“It makes sense that we put the new permits office within another sustainable development initiative,” Calvesbert Juliá said.

It is also telling that the new offices of Rodríguez, the first-ever government CIO, will be in the same building and that his office, and government agencies like the Puerto Rican Energy Affairs Administration, are also assisting the PBA in the revamp.

The new agency, however, will be much more than a symbol. It won’t simply replace ARPE; it will be the central government’s sole permitting agency, a significant stripping down of the current process, which involves 23 different government agencies.

In their place will be six permit managers to handle distinct issues of environment, culture and historic preservation, construction, use commentary, health and security and infrastructure. A seventh manager is appointed by the Environmental Quality Board (EQB) and will oversee the environmental impact statement (EIS) process.

The best way to envision the benefits of the new system is to look at a typical construction project, which today must go to several different agencies—from Fire to the EQB, from the Department of Natural & Environmental Resources to the Aqueduct and Sewer Authority—to get different permits for each aspect of the job that must be undertaken, with specific permits required for activities like cutting down trees and excavation.

While the need to comply with regulations will remain in effect, under the new system the proponent now only has to go to a single agency—OGPe—to get a single permit, which will contain all the needed provisions in it, listing both the developer’s rights and its responsibilities. Construction permits will now be mostly divided by size in terms of requirement levels.

GOVERNMENT GETS A DEADLINE

There will be a 90-day deadline

Continued from page 17

set under the new laws for projects that don't seek variances from established zoning laws or require environmental impact statements or related documents. Even longer projects will be substantially cut down, in many cases to a year or less. Permitting for a tourism project currently takes 8 years and for an industrial project 3.3 years.

Another common complaint about the current system is the amount of time it takes to get new permits when a business changes hands, even though the business activity remains the same. This has had the effect of complicating financial and contractual negotiations. Under the new scheme, it will take just three days to win approvals when only a name change is involved.

Under the new system, applications and challenges can be filed and reviewed immediately online by the public and the government. Proponents will be able to track the process online and see any tie-ups, while the OGPe executive director can take over a case to have it adjudicated if it is taking too long.

"We will be able to call up and know the status of a given project at any given time and what is holding it up. That is a core function of the work-flow system," Calvesbert Juliá said. "Not only will we be able to tell, but we can also run reports on that and program alerts. Corrective action can be taken. There is a lot of flexibility in terms of managing the process."

Currently, government officials from different agencies often blame one another for delays, but that will no longer be the case as all permit officials will work for the same agency, Rodríguez said.

The permits managers issue recommendations on a permit, and if they are unanimous in their view, the permit is either rejected or approved. In mixed decisions, the final word is held by an adjudicative board, which considers the recommendations by the permits officials in making a decision. Opponents can then challenge the decision to a new administrative, independent body, or review board, and then on to the Puerto Rico Supreme Court, which will have the last word on the matter. The idea is to have a quickened decision-making

"We are putting our money where our mouths are in terms of implementing a lot of the initiatives that have been ongoing for the past year."

—Edward F. Calvesbert Juliá,
deputy Economic Development
& Commerce secretary

process for both rejection and approval, officials said.

When the 90-day deadline is broken, the executive director can submit the case directly to the adjudicative board for a final determination, thus eliminating the implicit denial of permits today when officials "sit on" the process, he added.

Variances, granted for projects that don't meet all zoning standards or that are being proposed for unzoned areas, will also be granted through the OGPe agency, while large strategic projects will still go through the Planning Board for approval.

"We have streamlined a lot of the process and the time the government has to analyze the application," said Jennifer Mayo, who is the Planning Board's project manager for the permits implementation process.

In response to numerous legal challenges of permitted projects, such as the notorious Paseo Caribe case, the permits reform requires those seeking to halt a project to post a bond to cover potential damages should their challenge fail.

A NEW CUSTOMER FOCUS

Under the new system, proponents can also go through a preapproval orientation with OGPe personnel, which previews the obstacles a given project might face. This can help businesses avoid sinking too much time and money into trying to get permits for projects that are unlikely to be approved. It may also help a proponent tailor a project early in the process so that it has a better shot at approval.

The process is completely voluntary, and the government will charge for the service. It is one of several new services designed into the new



permitting system that shows a customer service focus not often found in government.

There will also be a streamlined and more economical permit process aimed at small businesses, as well as preferential treatment given to any project that complies with a new "green permit" code. So if new projects do things like incorporate energy- and water-conservation technologies, they will face a less burdensome approval process, Mayo said.

In addition to the central San Juan office in Minillas, there will be four regional offices across the island. All will have computer equipment, as well as orientation help available for proponents who lack computer skills. Officials are also looking to partner with other government agencies to open more satellite offices that can provide computer equipment and orientation.

However, most proponents won't have to visit any government office at all, because they will just apply for permits online.

AUTHORIZED PROFESSIONALS, INSPECTORS TO LEND A HAND

A full 35% of permits issued are simple, ministerial acts that don't require the discretion of government officials. Under the new system, these permits can be granted by a

new class of "authorized professionals" who will be able to grant a range of permits centered on their expertise, sometimes on the spot or in a matter of days. This will add more hands to the permits process, taking some of the burden off the government and increasing the efficiency of the entire process, officials say.

These authorized professionals will be able to do everything from issuing simple construction permits to issuing use permits, but the types of permits they will be empowered to issue will be related to their specific expertise. The law calls for several professionals to be able to issue permits, such as engineers, architects, planners and geologists.

The law also calls for a second class of private professionals to take part in the permitting process, called "authorized inspectors." These individuals will be required to perform some of the common inspections, currently done by such entities as the Health and Fire departments, which are necessary to receive projects. Authorized professionals can also be authorized inspectors, but the requirements to become an authorized professional are more stringent than to become an authorized inspector, so not all inspectors will be qualified to serve as a permit-granting professional, Calvesbert Juliá explained.

While a pilot project will be in place in December, the first true wave of authorized professionals and authorized inspectors will not be seen until early in 2011, Planning Board President Héctor Morales said. That is because the professionals will have to go through a training process in order to be certified by the government to grant permits.

Government officials, in conjunction with professional groups, will develop a framework for the required educational training, and then education institutions will draw up specific curricula that will have to be approved by the government.

"Before we can authorize the professionals, we have to establish a curriculum and the testing requirements for the professionals," Mayo said. "We are going to have a pilot project for December and the system should be fully in place and functioning by March."

A major focus of the training will

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be to ensure that the professionals and inspectors know the rules of the new permitting system and the new code that was drawn up as part of this implementation.

A NEW SHERIFF IN TOWN TO ENFORCE PERMITS

One of the most important aspects of the new plan is the creation of a new permits watchdog, the *Oficina del Inspector General de Permisos* (OIGP), or Office of the Inspector General for Permits.

The OIGP can be expected to draw more people into the system as well as increase environmental and general permit compliance.

“We’ve created an entire new entity whose sole existence is to ensure accountability and enforcement not only for the government entities, but also for the professionals as well,” Rodríguez explained. “The current system created a whole cottage industry of the *gestor* because that is the way people got ahead, having a *gestor* pushing your project through the government bureaucracy. We have eliminated the need for a *gestor*.”

The inspector general for permits will supervise the professionals, audit permits to ensure compliance to standards and take complaints from government agencies and the public concerning permit violations. The OIGP will also have broad powers to appeal permits and seek to halt illegal projects through the review board.

Importantly, the OIGP will be an independent entity like the Comptroller’s Office, and the inspector general will be appointed to 10-year terms to shield the official from political influence. Currently, ARPE both issues permits and hears appeals on them, an inherent conflict of interest in its primary functions.

The watchdog will also guard against corruption by overseeing both the new authorized professionals and government officials involved in the permitting process. It will conduct audits on the permitting process to ensure that they were emitted according to the rules and regulations on which they are based and to look for other signs of potential corruption. Officials who break the rules will face stiff punishment

under the new law, which in the case of authorized professionals include the loss of his or her professional license.

INCREASING ACCESS, COMPLIANCE

Poor compliance with the current permitting system is as big a problem as the tortuous process of obtaining a permit. So the overhaul is aimed not only at simplifying the process, but also ensuring that permits are widely respected. Indeed, 56.25% of existing island construction is “informal,” or done without permits, while 43.75% is formal construction, according to a recent report by Interviron Services Inc.

Such flouting of construction standards is dangerous, since there is no guarantee that unpermitted structures are built for current earthquake, hurricane and flooding standards, officials said. It also takes a greater toll on the environment.

“The two components of compliance are accessibility and simplicity to do the right thing, and then accountability and enforcement. So obviously we are doing both. We are lowering the bar to make it easier for people to apply for permits, and we are raising the bar by increasing penalties,” said Planning Board President Morales.

Compliance also will be achieved by increasing penalties for permit violations, which will be substantially above current levels. Now there will be maximum penalties of \$50,000 for each infraction of the Joint Permits Regulations, and a \$100,000 additional penalty can be applied for continuing violations.

Officials believe compliance will also increase because the process to obtain a permit will be so much easier and quicker. Morales also said the officials were undertaking further initiatives beyond the law to increase access even more. For example, the new agency will have preapproved construction plans for affordable homes and other structures available for proponents’ use, which will expedite the permit process and lower costs even further. A similar initiative is aimed at the use of septic tanks and waste-disposal systems.

“If you want to build according to these model, preapproved plans, then it is already approved construction,”



“We have streamlined a lot of the process and the time the government has to analyze the application.”

—Jennifer Mayo,
Planning Board associate member &
project manager for the permits
implementation process

Morales said, adding that the only additional approval needed would be for the site. “We are focusing on low-cost housing and trying to diminish the amount of illegal construction. These plans are for people who can’t afford to hire engineers and other professionals.”

THE POWER OF TRANSPARENCY

Officials, however, say that the inherent transparency of the new system is perhaps its most important feature. It is the reason they believe the new system will not only be vastly easier and more efficient to use than the current one, but that it will also increase compliance with island permitting laws and public oversight.

“Transparency is a huge component

of the principles behind which these new regulations and technology are being developed,” Calvesbert Juliá said.

Traditionally, all the government agencies involved in the permitting process have had separate computer information systems around their areas of interest and each would interact with proponents on individual permits.

Now the agencies will be feeding information into a single government information system that all government entities, including the OGPe, will use. The system will also feature a government Geographic Information System (GIS) onto which information from the various agencies will be grafted.

“Each agency has traditionally produced its own information. Each agency will continue to read, write and modify their own information in the system, but they will also be able to read the information from other agencies,” Rodríguez said.

While the OGPe staff will use this information to make determinations on permits, so will the authorized professionals involved in the permit process, as well as the public at large. That is because the Internet-based system will be accessible to everyone at the same time.

Officials insist that the public’s right to challenge a project will not only be protected, but also enhanced under the new system because of this increased transparency, which also requires signage be placed on a property within two days of filing for a permit, with all essential data posted to enhance public awareness. Also, from the moment a proponent files an application, it will be online for everyone to see, including opponents.

The GIS is located on the pr.gov website, which is evolving into the portal for all public transactions. Using it, citizens can see any new projects proposed for their neighborhood, or an environmental group could monitor any proposals impacting specific nature reserves. More importantly, officials say, challenges to permits can be made online.

“That was one of the big misunderstandings about this law during the legislative process, that this law would somehow limit opportunities

Continued on page 20

Continued from page 19

for comment. This increases the opportunities for participation because it provides complete transparency,” Calvesbert Juliá said.

A POWERFUL RESOURCE FOR MUNICIPALITIES

The new permits legislation will not infringe on the autonomous power of municipalities to make their own planning and permitting decisions, officials say.

“While there are 38 autonomous municipalities on the island, just 10 have their own permitting offices. A major reason for this is the expense of establishing such a service,” Morales said, adding that the new permit system should be attractive to even autonomous municipalities since they will still rely on OGPe for the underlying information needed to grant permits.

“Other than the 10 towns that have their own permit offices, we hope they will adopt us. This is a new roadmap for municipalities to retain their autonomy without having to set up their own unique systems and offices,” Morales said.

The Planning Board chief said that town governments would be able to assure their autonomy because they will be able to have direct representation on the adjudicative board, which decides permits-related cases.

The benefit to town governments is that they would save money by building off the OGPe system, officials say. They could have OGPe handle the permit requests and, through municipal appointments to the decision-making adjudicative board, maintain a powerful voice in deciding unresolved cases. Under this plan, a town would make two appointments and perhaps have a single permits official, allowing it to maintain a staff of three rather than the up to 25 workers that towns with their own permits offices often employ.

PREPARING FOR A REVOLUTION IN PERMITTING

While not much has happened publicly since the legislation putting the new permits system in place was enacted last December, officials have been working nonstop on getting the system ready for implementation under a one-year deadline.



A Planning Board team headed by Mayo has been reviewing all permit regulations, processes and policies in place and has compiled a new Joint Permit Regulations, which will combine all permit requirements and policies in a single volume. Public hearings were held and a final version is expected to be submitted to Gov. Luis Fortuño for approval over the next month.

“This is the way government is going to operate. We will be customer-centric as opposed to being government-centric.”

—Government Chief Information Officer Juan Eugenio Rodríguez

“We have looked at every rule, order, resolution, process and practice of more than 26 government agencies. Many of the processes were repetitive, incongruent and some have proved unnecessary,” Morales said.

Repetitive information and unnecessary requests were eliminated, as was the common problem that the same information was being requested of proponents from several different agencies, Mayo said. In other cases, contradictions were found in the process between different agencies, a situation that also had to be resolved. The Planning Board undertook this work with input from all government agencies involved in the permit process.

Once that was done, the agency put the information into a single,

cohesive set of rules, which will serve as the code for all permits granted by the Puerto Rico government. The Joint Permit Regulations are divided into sections, making them easier to read.

“While it may look like a voluminous document, there was a lot of streamlining undertaken,” Morales said, pointing out that the new regulations are about half the size of the current rules in place.

“This is going to revolutionize the way permitting takes place on the island,” Economic Development & Commerce Secretary José Ramón Pérez-Riera said. “It’s going to give us a tool to empower the private sector to do what it is supposed to be doing: generating economic activity on the island and creating employment.” ■



From left, are: Government Chief Information Officer Juan Eugenio Rodríguez, Deputy Economic Development & Commerce Secretary Edward F. Calvesbert Juliá, Planning Board President Héctor Morales and Planning Board Associate Member Jennifer Mayo

Officials tout \$7 million investment as cost-effective

Everis, Xtrategit hired as consultants as government embraces 'open source' technology

BY JOHN MARINO
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The government will invest about \$7 million in hardware, software and expert advice to implement the new Integrated Permitting System—a small price, they say, for the big benefits it will reap.

Transforming the permitting process into an agile, efficient system will both improve current economic conditions and allow the government to manage the increased level of permitting activity that is expected in the future as economic conditions improve, said Jennifer Mayo, the Planning Board associate member who is spearheading much of the implementation work for the new system.

“In the immediate future, it will give us a balanced budget operation and it will allow our customers [businesses and citizens] to see that the permitting process is not an obstacle for doing business in Puerto Rico,” Mayo said.

Chief Information Officer Juan Eugenio Rodríguez said the government chose Spain-based firm Everis, an international consultancy, because of its expertise in assisting governments pushing to provide services online, as well as its growth philosophy of meeting staffing needs through local hires in places where it operates. It beat out eight other competitors. Also involved in the process is local firm Xtrategit, which also works with public and private clients to put technology to use to transform their operations.

“Everis has extensive expertise doing this in Europe. Europe is farther ahead than the United States in so many different ways, including the authentication of a person,” Rodríguez said. “We are using their expertise to bring Puerto Rico to a level that will be ahead of many of the states.”

European Union rules require that governments offer services and transactions to the public



Manuel de Oliviera, executive vice president of international development for Spain-based Everis

The executive said that the U.S. market is particularly appealing at the moment because the administration of President Barack Obama is striving to push the federal government to make better use of technology and provide more services online.

online, by telephone or in person, and also require that citizens be allowed to switch between these different methods in originating and terminating contracts. They also forbid governments from requesting citizens to provide any information that the government

already possesses.

While Puerto Rico has a similar law, championed by Secretary of State Kenneth McClintock when he was in the Senate, it has been roundly ignored until now.

“The new system requires, which is not so easy, the integration of

all the systems of every entity involved in the permitting process,” Rodríguez said, adding that the company will custom design a system for Puerto Rico based on its E-governance system, which is employed in governments across Europe, including the city government of Madrid, as well as in Latin America.

Rodríguez also said that the government will switch to “open source” software, which lacks hefty licensing costs. “Worldwide, open source is being driven by governments looking for high-quality software and to lower costs. We are actually jumping on that bandwagon.”

Edward F. Calvesbert Juliá, deputy Economic Development & Commerce secretary, said the company is also an attractive partner because “they want to come to Puerto Rico to establish a center of excellence as a way to enter the U.S. market with their platform.”

That fits in with long-term government plans to export services from Puerto Rico to spur local economic development, he added.

Manuel de Oliviera, Everis’ executive vice president of international development, refers to Everis as a firm of Spanish origin because it is in reality an international firm with a large portion of its staff hired locally wherever it operates.

He said Puerto Rico can help it break into the U.S. market because of its political status, the ability of local professionals to operate in the United States and because this project will provide a concrete example of how the company can help large organizations transform their operations for the better.

The executive said that the U.S. market is particularly appealing at the moment because the administration of President Barack Obama is striving to push the federal government to make better use of technology and provide more services online. ■