

**DEVELOPING A PROGRAM FOR IMPROVING COMPLIANCE WITH
THE CALIFORNIA COASTAL ACT**

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Background

The California Coastal Commission (Commission) is a State environmental agency charged with managing the conservation and development of coastal resources for the long-term protection of California's 1,000 mile coast zone. The Commission's enabling legislation is the California Coastal Act of 1976 (California Public Resources Code Sections 30000 et seq, hereinafter "the Coastal Act"), which established a State-wide coastal management program, emphasizing partnerships between the State and local governments. The Commission implements the Coastal Act through three primary mechanisms: 1) development review and permit issuance; 2) the review of local coastal programs (LCPs), prepared by local governments and submitted for Commission review; and 3) consistency review of federal activities affecting the coastal zone.

A significant portion of the Commission staff's day-to-day regulatory work consists of project review and permit issuance. The Commission issues approximately 1,000 permits per year for development proposals within the coastal zone. The term "development" is defined broadly by the Coastal Act, and generally concerns actions such as disposal of materials, subdivisions of land, as well as the more traditional types of building and construction activities. The Commission approves approximately 96% of all permit applications. These developments range from single-family homes to gravel mining and sand dredging projects. To ensure that impacts from coastal development are avoided or minimized, the Commission often approves permits subject to conditions of approval that, if met, will bring development into compliance with the Coastal Act. Most permits issued by the Commission contain conditions of approval.

The Coastal Act's resource protection policies were written with the intent of protecting and enhancing wetlands and other environmentally sensitive habitat areas, public access to and along the beach, low-cost visitor-serving recreational uses, agricultural uses and productivity, commercial and recreational fishing, and community character. In addition, the Coastal Act seeks, where possible, to concentrate new development around existing developed areas, by establishing urban boundaries and directing new development towards areas with existing and adequate services. Due to the diverse nature of development proposals, coupled with the Coastal Act's breadth of resource protection policies, the types of conditions placed on permits varies greatly.

* The views expressed in this article do not represent the official position of the California Coastal Commission.

Compliance monitoring tasks associated with permit conditions can be thought of generally as falling into three categories: prior-to-issuance verification, periodic monitoring, and long-term monitoring. Prior-to-issuance (PTI) conditions must be met before a permit can be issued. Examples include the recordation of an open space easement, or the submittal of revised plans that demonstrate compliance with other permit conditions. PTI conditions are typically the easiest to monitor, and are thought to have the highest rates of compliance because applicants have a strong incentive to comply—getting their permit. The second category, periodic monitoring, typically concerns conditions that are tied to a date or schedule. Examples include the annual submittal of biological monitoring reports that demonstrate compliance with a permit condition. Some of these may have 5 to 10- year reporting requirements and are more difficult to track than PTI conditions because of the time element. Lastly, long-term monitoring conditions include general site restrictions or prohibitions, such as lighting restrictions, work windows, and restrictions on future development without a permit. These conditions are the most difficult to monitor, due to their lack of “trigger dates” and the Commission staff’s extremely limited ability to conduct site inspections.

Conditions are inherently linked to both the proposed development actions and specific Coastal Act policies. The majority of conditioned approvals are granted *only* because the conditions bring the project into conformity with the Coastal Act. That is, without these conditions, the proposed projects would not comply with the Coastal Act. For this reason, implementation of important Coastal Act policies does not stop at the point of permit issuance; rather it extends throughout the life of the permit. The Commission’s current enforcement program was established in 2002 and deals with hundreds of violation complaints each year. However, permit condition compliance has historically been the responsibility of the analyst who drafted the permit. Each analyst has his or her own way of tracking compliance with permit conditions. Currently, these efforts are not carried out in a systematic fashion.

The Commission’s staff has undertaken several short-lived efforts aimed at establishing a compliance baseline. The most notable effort occurred between 1984 and 1992. With support from NOAA’s Office of Ocean and Coastal Resource Management (OCRM), Commission staff reviewed files and conducted site inspections for more than 1,000 issued permits. The assessment revealed an average compliance rate of 72% statewide, with dramatic variation across the Commission’s six districts. Throughout this period, the agency was undergoing a budgetary crisis. Between 1990 and 1993, the agency’s state funding was cut by 34% and staffing levels dropped by 36%. By the end of fiscal year 1992, the agency was forced to lay off the 13 interns who had been supporting its enforcement and permit monitoring efforts.

The Commission has since been unable to mount a compliance assessment effort comparable to that of the late 1980s. This is due in large part to volatile budget cycles and a steady decline in staffing levels. At the same time, the volume and complexity of permit applications has increased over the years, consuming an ever increasing proportion of the agency's staff resources. These constraints are further compounded by statutory deadlines requiring staff to bring a completed permit application to hearing within 49 days after it is filed, as well as other requirements for swift processing included in the Permit Streamlining Act (California Government Code Sections 65920-65963.1). As a result, the agency remains unable to conduct the types of analyses necessary for establishing compliance rates and gauging policy implementation success.

2006 NOAA Coastal Fellowship Compliance Program

While resource constraints have not subsided, and other challenges remain, the Commission staff has been proactive in its participation in and support of the development of a compliance assessment program. The agency secured a Coastal Management Fellowship position in early 2006, and for the last 18 months, we have been developing a program that can provide the types of meaningful analyses necessary for program improvements, while being robust enough to withstand unforeseen changes in State and federal funding. The Commission's 2006 Fellowship Proposal included goals and objectives for the project. The four most notable include: 1) development of a permit condition compliance-tracking database; 2) development of a pilot program for effectively monitoring compliance across two of the agency's six districts; 3) development of a final program for systematic compliance assessment statewide; and 4) generation of data to support a budget change proposal for resources to staff the program. The process for approaching these goals is discussed below.

As noted above, permit compliance is both a permit and an enforcement concern. The Fellowship Project is being co-supervised by Chief of Enforcement Lisa Haage and Deputy Director of Permitting John Ainsworth. This ensures that both programs have equal involvement in the process and provides the Fellow with immediate access to knowledge pertaining to those two program areas. We convened a 15-member Compliance Advisory Committee to further ensure that the project reflects the needs of the agency. The Advisory Committee consists of staffers from all "ranks" within the agency, and serves as a bank of ideas, a peer-review panel for draft documents, and as a sounding board for ideas to ensure the final product is both feasible and sustainable.

A comprehensive compliance process review laid the groundwork for this project. As discussed above, more than 15 years had passed since the agency's last concerted effort to systematically monitor compliance. Valuable lessons were undoubtedly learned through that process, but most staffers involved had since retired or found other jobs. Drawing from the memories of senior staff and extensive archival research, the Compliance Project team pieced together a

summary of historic efforts to evaluate compliance, their methodologies and outcomes, and any resulting program changes.

Our next challenge was to identify and document contemporary compliance assessment efforts, gaps, hurdles, and opportunities within the agency. Commission actions involving conditions are generated across six district offices and four program areas. Those within each of the various districts and program areas are familiar with the issues pertaining to their specific programs, but none is intimately familiar with all programs' and districts' operations. We used semi-structured interviews to ensure that our analysis captured the perspectives of respondents across all ranks and relevant program areas. The interviews consisted of approximately 25 standardized questions, and lasted between one and three hours each. In total, we interviewed 30 staffers, representing nearly ¼ of the Commission's total staff. We analyzed the interview results, looking for issues that repeatedly emerged across responses.

Our interview findings were further verified through the Fellow's participation in and observation of condition compliance-related activities. This also provided the Fellow with a wide range of exposure to the Commission's activities, as is the intent of the Coastal Management Fellowship. These activities included attending Commission hearings, participating in staff meetings and district office visits, accompanying enforcement staff on compliance-related site visits, preparing and presenting before the Commission an enforcement order concerning permit condition violations, and "shadowing" enforcement and permit staffers, among other tasks.

To advance internal discussion about how best to structure the Commission's program, we interviewed staff from 12 other agencies with similar structure and regulatory function. These agencies included federal, state, regional, and several local coastal governments. The interviews helped us better understand the general level of priority other agencies place on compliance monitoring, while revealing specific models and tools currently employed by these agencies. Relevant tools included: outreach materials designed to improve communication between applicants and agencies; technology tools that improve internal efficiency and agency transparency; as well as enforcement tools that facilitate swift violation resolution, while also deterring potential violators. We found no single program that perfectly matched the Commission's needs, but we did find several desirable program elements of potential utility to the Commission.

As we proceeded through these steps, it became increasingly evident that the Commission's existing permit tracking database system was not designed to support a systematic compliance assessment program. While the agency eventually plans to undertake a complete database overhaul, the need for compliance tracking functionality was immediate. Drawing from the interviews, other agencies' examples, and an assessment of the Commission's database, we developed a new database module for tracking compliance. The module was

developed to track condition titles, language, categories, due dates, as well as inspection and compliance data. We also included in the database several automatic reporting functions to help staff remember the due-dates of periodic compliance monitoring requirements. The module was developed to augment the existing system and designed to facilitate integration into that system.

Each of the previously discussed steps revealed information useful to the development of the final program. However, the process of drafting our assessment report provided the forum for comprehensively evaluating the insights gleaned from these steps, while also fostering discussion of strategies for moving forward. The report includes discussions of historic efforts, current practice, options and hurdles, and specific recommendations for moving forward. To validate our findings and gauge our trajectory, we circulated the report among the advisory committee for peer review. The draft report and its recommendations now serve as the foundation for program development.

With the database functional and the draft report nearing completion, we are presently conducting a condition compliance audit. The audit involves permit file check and site inspection for 120 randomly selected permits across two of the Commission's six districts. The audit serves several purposes. First, it provides a pilot test for assessing the functionality of the new database module. Such a "beta-test" will ensure the database is fully functional well in advance of its agency-wide deployment. Second, the audit allows us to work through each step of the compliance assessment process. This will help us evaluate our permit selection methodology, implementation design, and generate workload statistics. Equally important, the audit will help to draw out unforeseen obstacles. Finally, the audit will provide us with present-day compliance data. These data can help us better understand the extent of our compliance improvement challenge, provide information useful for program evaluations, and help the Commission secure resources to staff the final program.

In closing, permit conditions are one of the most important instruments used by the Coastal Commission to implement the Coastal Act and ensure coastal resources are protected. Conditions are extensions of Coastal Act policies. For this reason, ensuring compliance with permit conditions is an essential component of coastal program implementation. A systematic compliance assessment program can help coastal managers detect and resolve violations early-on, while helping to minimize loss of resource function. Early detection and resolution efforts can also help forestall the high political and monetary costs of resolving violations detected long after the fact. Active monitoring may serve as a deterrent to would be violators by increasing the perceived likelihood of being caught. Finally, compliance data generated from a long-term compliance monitoring program can help the agency gauge program success and identify areas in need of improvement.

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