

Enforcement Strategy Development

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Strategic Plan Action Item

- ***Update Policies:*** Develop new and regularly update existing planning, regulatory, and enforcement policies, practices, and procedures based on a review of past practices, best practices, available science, and knowledge of probable impacts on the Bay and Bay Area.
- ***Data-Driven Enforcement: Develop and/or revise a systematic and data-driven enforcement strategy and policy to set enforcement priorities, improve compliance, improve regulatory and legal effectiveness, and use resources more efficiently.***

Outline

- **Current Regulatory Process**
- Systemic Gaps
- Possible Solutions
- Role Of Enforcement Committee
- Next Steps

Not Necessarily Standardized Regulatory Process

- How Permits Are Prepared
- Post-Permit Issuance (i.e. Compliance Assistance)
- How Violations Are:
 - Discovered
 - Catalogued
 - Selected
 - Resolved

How Permits Are Prepared

- Aim for Standardized Permits
- Special Conditions and Findings
- “Exhibit A” Depicts Public Access
- Differentiation
 - Staffing
 - Experience
 - Time
- Permit Issued
 - Permit Analyst Moves On
 - Exception - Dredging Permits

Post-Permit Issuance

- No Regular Staff Follow Up
- Compliance Ball in Permittee's Court
- Simple Compliance Documents
 - Logged But Not Tracked By Anyone
- Complex Compliance Documents
 - Staff Review Not Coordinated With Enforcement
 - Lawyers
 - Engineer
 - Bay Design Analyst
 - Biologist

How Violations Are Discovered

- File Review and Site Visits By Staff
- Reports From:
 - Public
 - Neighbors
 - Contractors
 - Agencies

How Violations Are Catalogued

- All Staff
 - Complete “Enforcement Report” Form
 - Place in “Enforcement Report” Box
- No Set Schedule For Cataloguing
- Enforcement Staff
 - Conduct Basic Research To Complete Form
 - Enter Into “Enforcement Log” Excel Spreadsheet

How Violations Are Selected

- No Formal Case Selection System
- Total Caseload (190) + Total Staff (3) = Backlog

How Violations Are Resolved (1 of 2)

- Fact Finding And Decision Making
- Issue Violation Notice Which Starts Penalty Accrual
- Staff Follows Up And Responds To Submittals
- Resolve Physical and Paper Violations
- Resolve Penalty Portion of Violations
- Case Closed -> Enforcement Log Updated

How Violations Are Resolved (2 of 2)

- Average Total Duration = 20 months
- Systematic Application of Administrative Penalties
- Formal Enforcement Proceeding

Outline

- Current Regulatory Process
- **Systemic Gaps**
- Possible Solutions
- Role of the Enforcement Committee

Permit Preparation Gaps

- Long and Complex Permits
- Permit Organization Can Make Compliance Hard To Achieve
- Special Conditions Can Be Unenforceable
- Absence Of, Or Unclear, Findings Can Complicate Enforcement

Post-Permit Issuance Gaps

- No One Owns Compliance
- No Site Inspection Program
- No Project Tracking System
- Compliance Documents Handled Differently

Violation Discovery Gaps

- No Site Inspection Program To Verify Proper Permit Implementation
- Completeness Of Report Forms Varies
- No Report Form On BCDC Website
- Report Form Has Information Gaps

Violation Cataloguing Gaps

- Current Report Form Lacks Key Questions
- Fact Finding Takes Time
 - Exact Location
 - Validate Complaint
 - Current Property Owner
 - Permit Number/s
 - Violation History
- Enforcement Log Not Linked To Other Logs
- No GIS Enforcement Layer

Violation Selection Gaps

- No Prioritization System
- Are We Resolving The Right Violations?
 - Harm to Bay, Marsh and Public Access
 - Distribute Cases By:
 - Geography
 - Type of Project
 - Permittee
- 75% of 190 Cases In “The Bin”

Violation Resolution Gaps

- **Process Works for Active Cases**
 - Use Existing and Excellent Tools
 - Treat Cases Consistently
 - Don't start and stop
- Resolution Takes Focused Attention
- Sometimes The Tools Fail Us
- Decision Making Jitters
- Imposing Penalties Is Tough

Outline

- Current Regulatory Process
- Systemic Gaps
- **Possible Solutions**
- Role Of Enforcement Committee

Permit Preparation

Possible Solutions

- Improve Permit Organization
- Make Special Conditions More Consistently Enforceable
 - Legal or Enforcement Review
 - Training And Lessons Learned
- Support Each Condition With Findings
- Make Public Access “Exhibit A” Legible

Post-Permit Issuance Possible Solutions

- Amend Regulations To Solicit Plan Approval Before Permit Issuance
- Develop and Implement Permit Compliance Program
 - Need A Dedicated Permit Compliance Analyst
 - Do More Permit Compliance And Less Enforcement
 - Obtain Project Tracking Database To Centralize Regulatory Data

Violation Discovery

Possible Solutions

- Revise Enforcement Report Form
- Post Report Form On Website
- Require Electronic Forms Only
- Reject Incomplete Forms From Public
- Conduct Staff Training
- Update Work Instructions

Cataloguing Possible Solutions

- Centralize Data Sources With Project Tracking Database
- Train Staff
- Create Work Instructions
- Complete GIS Enforcement Layer

Case Selection - Possible Solutions Underway (1 of 2)

- Develop Prioritization System For All Violations
 - By Location (Bay, Shoreline Band and Marsh)
 - By Attribute (Physical vs. Paper Violations)
 - Habitat Value
 - Durability or Permanence of Change
 - Toxicity/Health & Safety
 - Amount and Size
 - Nature, Type or Use
 - Visibility

Case Selection - Possible Solutions Not Underway (2 of 2)

- Develop Prioritization System For All Violations
 - By Type of Paper (vs. Physical) Violation
 - By Geography
 - By Permittee
 - By Type of Project
 - By Urgency
 - Other
- Address Backlog

Case Resolution

Possible Solutions

- Regulations
 - Increase \$100/day fine
 - Extend Duration of Double Fine for Repeat Violations
- Laws
 - Obtain “Notice of Violation” Authority
 - Increase MPA \$30,000/Violation Administrative Civil Penalty Limit
 - Increase MPA \$2,000/Day Limit
 - Obtain SMPA Administrative Civil Penalty Authority

Next Steps

- Improve Report Form And Post On Website (Discovery)
- Enforcement Layer in GIS Database (Cataloguing)
- Complete Prioritization System To Maximize Effectiveness (Selection)
- Somehow Improve Compliance Assistance For Permittees (Post-Permit Issuance)
 - Create Single Email Address For Compliance Submittals
 - Review Marsh Monitoring Reports

Conclusion

- No Final Strategy...Yet
- Process Is Beneficial
- Need To Tease Apart Each Piece of Process
- Capacity Limitations
- Long Term Undertaking
- We Will Arrive

Enforcement Committee Role

- Your Thoughts About The Process, Issues And Solutions?
- What Matters Most?
- Support More Regulatory Staff
- Discuss Possible Changes to Statutes And Regulations
- Take Action On Formal Enforcement Proceedings

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