

PERMIT COORDINATION AND INTERAGENCY REVIEW IN COASTAL STATES

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ABSTRACT

Residential, commercial, and industrial development proposals in coastal regions often require regulatory review by a variety of authorities at the local, regional, state, and federal levels. The purpose of this research is to assess preliminary evidence regarding the extent and methods of permit coordination used by regulatory agencies in selected US coastal states. Interviews are conducted with decision-makers at state-level agency permit programs identifying rules or legal requirements that pose opportunities, challenges, and obstacles to a coordinated review process.

Keywords: Coastal Zone Management Act, interagency review, permit coordination.

1 INTRODUCTION

Development in coastal areas often requires regulatory review by a variety of authorities at the local, regional, state, and federal levels. For example, a proposal to build a residential development on a marsh hammock typically requires permission from the state for a bridge to access the site through the marsh, the Army Corps of Engineers with respect to on-site jurisdictional wetlands, the county health department to site a septic system, and the local zoning board. The approval process is even more complex if certain species are threatened or endangered or archeological resources are present.

Observations conducted by the authors in the state of Georgia establish several reasons to believe that the public interest in effective environmental review is not safeguarded by the manner in which permit applications are currently assessed:

- The existing project review process is not guided by a set of procedures with respect to the order of permit application, which can have the effect of preventing one agency from officially considering the concerns or actions of other agencies during subsequent permit review.
- In some cases, this permit segmentation results in the piecemeal approval of a project proposal which, taken as a whole, may be unacceptable from an environmental protection perspective.
- In every case, this lack of coordination places project proponents in the position of choosing the application strategy that promises the best chance of securing the necessary approvals.

In theory, every permitting authority notes that an applicant is required to meet all applicable permit requirements by other entities. In practice, however, the more permits a project attains, the greater the developmental expectation the proponent acquires (stemming in part from the greater investments that have been made), and the more tangible the legal arguments become against a subsequent permit authority choosing to exercise discretionary review authority that could render the project unbuildable or less profitable. At the very least, permit approvals by one agency should not prejudice the prerogatives of other agencies.

Aside from the public interest in environmental protection, developers also have a potential interest in permit coordination. While environmentalists often perceive 'permit coordination' as synonymous with truncating environmental agency or public review, developers often assume that the process leads to 'approval denied' or an endless regulatory quagmire; nevertheless, many reputable developers (and their consultants) would accept a rigorous, more structured, interagency review process for a more reliable roadmap through the regulatory landscape. The reason is simple: an early 'no' is preferable to a protracted one and the quickest route to 'yes' is always a cost saving. This research investigates the permitting process and the level of coordinated permit review among state agencies.

2 POLICIES INFLUENCING COASTAL DEVELOPMENT

The public interest in environmental protection that began to take shape in the 1960s focused attention on the fragility of natural systems and the knowledge that humans are biological creatures living in a vital ecological relationship with nature. Research shows that Americans overwhelmingly support environmental protection; in fact, between 1970 and 1992 public concern for environmental issues increased significantly as environmental protection gained the backing of a majority of Americans [1].

This concern has translated into increased advocacy by individuals, communities, policy-makers, and other stakeholders for the use of public funds to protect the environment. Over the past 30 or so years, several laws have been developed and strengthened to increase natural resource protection in the United States while at the same time facilitating development opportunities. Examples of such laws include the Coastal Zone Management Act (CZMA), the Resource Conservation and Recovery Act, the Clean Water and Air Acts, and the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund). Collectively and separately, these laws affect virtually every type of development in the nation.

The law that directly affects natural resources in coastal areas is the CZMA, which establishes a voluntary partnership between federal and state governments designed to 'preserve, protect, develop, and, where possible, restore and enhance' coastal areas [2]. The CZMA encourages states to establish a coastal program that balances the need for economic development with environmental protection and to create special area management plans to protect 'significant natural resources, reasonable coastal-dependent economic growth, improved protection of life, and property in hazardous areas' [2]. It also calls for the enhancement of government decision-making regarding coastal resource protection. In addition, the law advocates coordination among federal, state, and local agencies, the government, and the public to protect these areas.

Washington was the first state to establish a Coastal Zone Management Program (CZMP). Since then 29 coastal states and five island territories have developed programs. As part of the CZMA, federal agencies are obligated to coordinate their activities with the states. The 'Federal Consistency' provision of the CZMA requires the activities of federal agencies that affect coastal resources to be consistent with the enforcement policies and capabilities of a federally approved state CZMP. While all of the states have established methods to ensure Federal Consistency, the majority also require specific permits to make certain that coastal development does not unnecessarily impact the environment.

3 LITERATURE

Since the advent of the CZMA, numerous studies have employed a host of measures to evaluate the achievements of the program. It is not surprising that measuring the overall success is rather onerous

given the differences in state programs and the variety and extent of coastal impacts. Bernd-Cohen *et al.* [3] provided an overview of 60 articles evaluating coastal zone management (CZM), each of which falls into one of four classes: how-to guides for conducting CZM evaluation [4, 5]; assessments of the federal program [6–9]; evaluations of state coastal programs [10–13]; and the impact of decision-making on coastal areas [14–16]. Methods to assess the effectiveness of coastal zone programs have taken many forms including number and type of permits issued [14], public expenditure on CZM [17], and types and number of regulations implemented [6].

Further research looks beyond the immediate impacts of the program, addressing the need for environmental dispute resolution that arises when differing interests compete for the same environmental resources [15]. Other studies provide critiques of interagency processes affected by competing mandates and the relationship to public participation [18], collaborative planning efforts [19], and assisted negotiation [20].

In a comprehensive study of state and federal CZMPs, Hershman *et al.* [21] provide a systemic review of the processes and outcomes of all state programs approved under the CZMA. This ‘effectiveness evaluation’ defines the link between specific goals of the CZMA and the state processes and outcomes designed to achieve the goals. The authors identify two limitations to their research: data scarcity for outcome indicators, and more important to this study, outcomes that can be identified are often the result of partnerships and coordination among different agencies (not specifically the CZMP outcomes) or the agency and private groups with related goals.

This study addresses that gap by evaluating preliminary evidence regarding the nature and extent of permit coordination among state-level agencies charged with achieving the goals of the CZMA and other agencies that may have jurisdiction over the same project. General trends in selected state-level coastal programs are identified and interagency review and coordination in the permitting process is specifically addressed; methods and innovative techniques are also identified.

4 DATA COLLECTION AND METHODOLOGY

The interview method was chosen to understand interagency coordination and the perspectives of those involved with coastal development at the state government level. The interview method is an appropriate way to obtain both qualitative and quantitative information about a complex topic and is useful to identify additional research opportunities. Interviews are regularly used in policy evaluation and have been used extensively to research CZM initiatives [21]. This study follows the protocols outlined by Weiss [22].

The interviews were conducted with representatives from those states that border the Atlantic and Pacific Oceans and the Gulf of Mexico in the coastal United States. Time and funding limitations excluded interviews in the Great Lakes region, Alaska, and Hawaii though all adopted programs consistent with the CZMA. Respondents from 20 states participated, each representing unique ecological resources and permit processes. One state (California) refused multiple requests to participate, thus those findings are limited.

Prior to conducting the interviews, the researchers collected publicly available data on state programs primarily via the Internet. Many state websites provided general information on the types of permits necessary for development, the application process, and the requirements for the issuance of permits. That information was recorded and then supplemented with data gathered from interviews.

The interviews were conducted with agency personnel, specifically those involved with coastal protection initiatives, over a 9-month period in 2005. Multiple respondents with expertise in various areas were questioned on a range of issues related to coastal permitting. A total of

32 agency personnel participated in the study – an average of 1.6 per state. All the respondents were initially contacted by telephone; some chose to provide follow-up information through written correspondence. Consistent with the Hershman *et al.* [21] study of the effectiveness of CZMPs, administrators were given the opportunity to review and correct any responses prior to the completion of the study.

The interview questions were developed collaboratively by the Georgia Coastal Resources Division, Georgia Conservancy, Savannah State University, and the Center for a Sustainable Coast. Questions addressed a broad range of permitting issues and were primarily open-ended. Information on the types of permits issued, approval and denial rates, and deemer language was collected. ‘Deemer’ is defined as language that deems a permit approved if the maximum review time has been reached and the agency fails to inform the applicant otherwise. Questions were posed that addressed the preferred order of the permit process, and interagency, state and federal review specifically to assess the extent and methods of any coordination. Respondents were also asked if they were aware of permit coordination other than their own, and if they had any recommendations for improvement in the permit review process.

The results of the interviews provide the data for the remainder of the article. Program trends and permit coordination are identified; unique process and regulations are recognized; conclusions are based on an analysis of the data that was collected.

5 RESULTS

5.1 General program trends

All the states studied have active coastal zone programs, reviewing an average of 1,470 applications annually (Table 1). Most states do not issue permits through their CZMP (90%), rather they provide consistency determinations and issue permits through other agencies. Others provide consistency determinations and issue permits ranging from beach front construction certificates to dock permits. Delaware and Maryland differ markedly from the others, delegating the bulk of permit authority to the local level.

With the exception of a few states, not many applications are denied; in fact, the average annual denial rate is roughly 8% with several states reporting in the range of 0%–2%. When New York is excluded from the results, denials are reduced to about 6%, arguably due to that state’s high expectations for dock permits. While the relatively small number of denials may be interpreted as lax enforcement, the results of the interviews indicate that is not the case. Several respondents indicated that not only are developers willing to conform to minimum environmental protection standards established by law, agencies are willing to advise developers to ensure project compliance.

Table 1: State-level permit activity.

	Permits issued	Permits denied	Deemer (days)	Average length of review (days)
Range	0–8,000	0–1,400	10–180	10–360
Mean	1,470	123	81	58

n = 20 states (excludes California).

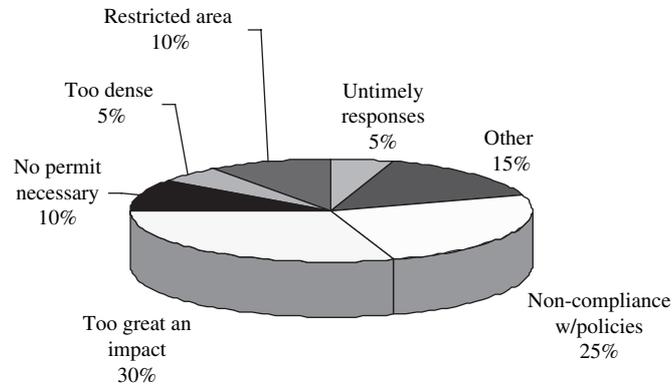


Figure 1: Reasons for denial; $n = 20$ states (excludes California).

They acknowledged that mentoring by environmental agencies is practiced regularly and helps to reduce the likelihood of rejection by identifying development challenges and obstacles associated with environmental regulations. Several found it to be an acceptable way to ensure that projects comply with environmental protection regulations.

When respondents were asked 'what is the most common reason a permit is denied,' responses varied (Fig. 1). Reasons include too great an impact on aquatic or coastal resources (30%), non-compliance with applicable environmental policy the permit is designed to enforce (25%), no permit necessary for development (10%), development requested in a restricted area (10%), or the project density is too great to support environmental protection objectives (10%). Further, failure of applicants to meet deadlines causes 5% of applications to be denied.

5.2 Permit review and coordination

Multi-agency review is typically assumed to be a necessary step to ensure environmental protection. Given that, does it necessarily improve environmental protection by providing extra checks, or does it just add onto the time of the process? Conversely, to the extent it does add time, is the extra time justified by the extra level of review provided? Limits are clearly important from an economic perspective as the developer's mantra is 'time is money,' yet may not be in the best interest of environmental protection. Most states (91%) guarantee timely reviews with regulations that include deemer language ranging from a minimum of 10 days (Texas) to 6 months (Oregon). While the average length of review is 58 days, that time is dependent on the size and scope of the project and the type of permit sought. Massachusetts' regulations, however, do not include deemer language; rather, a suggested review period is indicated. Many applications exceed the suggested review period, but applicants are guaranteed reimbursement of their application fee if that time is surpassed.

An important assumption associated with greater interagency coordination is that it improves governance over the specific goals and objectives of the related regulations. Evidence is mounting that this is indeed the case as several states have been making a noteworthy effort in recent years to achieve a streamlined shoreline permitting process. In Virginia, developers submit a single application that receives independent yet concurrent review by local wetland boards, the Marine Resources Commission (MRC), the Virginia Department of Environmental Quality, and the US Army Corps

Table 2: Permit coordination.

	Yes	No	No response
Preferred order to the permit process?	11 (52%)	10 (48%)	0 (0%)
Specific mechanism for interagency review?	13 (62%)	8 (38%)	0 (0%)
MOAs between agencies?	7 (33%)	13 (62%)	1 (5%)
Permits conditioned on other agency review?	13 (62%)	7 (33%)	1 (5%)
Permit coordination between your CZMP and other states or federal agencies?	12 (57%)	7 (33%)	2 (10%)

n = 21 states (includes California).

of Engineers. This coordinated evaluation of applications accounts for various statutes that govern the disturbance or alteration of environmental resources, and the MRC serves as a central clearinghouse for all levels of review. This 'one-stop-shop' limits the time developers spend applying to different levels of government. It also allows the MRC to identify any conflicts that arise prior to the issuance of the permit so that agencies can have a coordinated response be it to grant or deny approval.

Are these efforts to 'streamline' the permit review process responding to concerns about needed environmental protection improvements or to calls for 'improved governance' in response to objections raised by project applicants? These are not necessarily the same thing and should not be conflated, although they need not be incompatible. Responses show that in many states, pressure to improve the process has come primarily from applicants. Of particular note is the comprehensive reform taking place in the state of Louisiana. In the late 1990s, under significant political pressure by oil and gas companies, the governor's office ordered significant restructuring of existing processes to design methods that meet the need of applicants without reducing the protection of environmental assets. Several key elements of reform were put in place to improve efficiency and effectiveness in permitting. For example, the Departments of Natural Resources and Wildlife and Fisheries signed a Memorandum of Agreement designed to reduce oil and gas processing delays by about 30 days. Oil and gas companies request more than 60% of Louisiana's coastal use permits [23].

Among the states researched for this study, 52% have a preferred order for permitting although processes do vary (Table 2). In general, applicants must prove that projects meet local zoning requirements and not be contradictory to comprehensive plans before permits are issued at the state level. After a project receives local approval, each state has different requirements when applying to secure agency approvals. Some require individual applications to each agency while others require a single application to be reviewed by multiple agencies.

Nearly all states have specific mechanisms for interagency review ranging from monthly to bi-monthly meetings though only a few states have formal memorandums of agreement (MOAs) between agencies (62% and 33%, respectively). Many states condition permits on other agency review (62%). To avoid conflict, one agency serves as a clearinghouse, and no permits are issued until all have reviewed and approved the proposed development. In states where permits are not conditioned on the recommendations of other agencies, there is at least some level of review that

permit requests are subject to. Most states coordinate the process with federal agencies (57%), primarily the Corps of Engineers; however, there is little interaction between states.

One might suspect that, because many states lack formal agreements in the form of MOAs or other written documents, dispute resolution techniques would play a substantial role in negotiating settlements between agencies. Dispute is intrinsic to any topic, and CZM is not immune; however, it is important to note that general consensus among respondents and evident in state regulations is that formal dispute resolution procedures exist, but often apply only to situations where the applicant disagrees with the agencies' findings, not to interagency negotiations. Interagency review and coordination procedures, though not fail-safe, are often the only mechanism available to resolve conflicts among agencies.

6 CONCLUSION

The issues associated with permitting have important implications at both the state and local levels. Problems occur when the lack of a consistent, coordinated process with significant delays leads to a reduction in the private investment that benefits communities by enhancing the tax base. Further, the piecemeal approach to approvals can result in lengthy and expensive litigation. Additional problems arise when disputes between applicants and agencies are politicized and elected officials pressure for approval of marginally acceptable requests or ask that denials be reconsidered. This research investigates permitting in coastal states and provides preliminary evidence regarding the level of coordinated permit review among state agencies. Information from 21 states was collected over a 9-month period showing a very active process that varies considerably state to state.

General program trends show substantial activity with an average of 1,470 permits issued annually at the state level. Denials average 8%, but several states are much lower with rates in the 0–2% range. There are a variety of reasons permits are denied, though the vast majority are due to negative environmental effects. The remaining reasons are procedural; for example, the applicant incorrectly applied for a permit in an unrestricted area. Timeliness is recognized as an important issue as most agencies adhere to self-imposed deadlines typically no longer than 180 days.

One of the more interesting findings is that agency personnel often advise applicants in ways to bring projects into compliance. This leads one to question if state officials are working with applicants to improve projects so that they are less environmentally harmful, or if they are working with them to satisfy permit application formalities that may have little to do with environmental protection substantively. Respondents were not asked the question directly, but the reality is that agency authority is limited by statutory requirements. The general assumption is that the regulations that are in place adequately protect the environment, which may or may not be the case. While additional recommendations may be suggested, developers are only required to meet minimum standards given the environmental conditions at a specific site.

A major assumption of this research is that delivering coordinated responses to applicants reduces the likelihood of litigation, limits the time developers spend seeking approvals, and provides increased protection for environmental assets. Findings show that, in general, respondents perceive interagency review as an acceptable control for environmental protection and process efficiency with almost two-thirds reporting a specific mechanism. Many of the states without a formal method reported informal agreements, often telling sister agencies of proposed decisions as a matter of courtesy. This admittedly leads to inconsistency among results, which is particularly evident when localities grant variances and the state environmental authority is unwilling to comply with that decision. The use of formal mechanisms or MOAs between agencies is rather low with only 33% reporting use. This may change, however, as states implementing comprehensive

reform are adopting agreements to reduce the time required to obtain permits, e.g. as occurred in Louisiana.

Finally, states recognize the need to streamline the permitting process. Efforts have been underway in several states, some by mandate and others by agency dictate. Government at the federal, state, and local level along with business and the environmental community are engaged in a struggle to control the nation's coastal resources, thus it is important to establish a systematic method of permit application and approval to strengthen the balance between development rights and environmental protection. Without good organization, resources lack protection and the likelihood of litigation increases. Studies of individual cases can help states identify problems within their own process and provide a roadmap for improved interagency review that limits delays while enforcing the laws that are designed to protect the environment.

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