

**CALIFORNIA COASTAL COMMISSION**

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# Th-16a

Staff Report: November 26, 2003  
Hearing Date: December 11, 2003  
Staff: CLD-SF

## STAFF REPORT FOR COMMISSION CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-03-CD-12

RELATED VIOLATION FILE: V-7-03-04

PROPERTY LOCATION: Drakes Estero, Point Reyes National Seashore. The property is approximately 0.5 miles south of Sir Francis Drakes Boulevard

PROPERTY DESCRIPTION: Johnson Oyster Company, Inc. holds a lease from the National Park Service, owner of the Point Reyes National Seashore, for a five-acre area at the northern terminus of Schooner Bay in Drakes Estero. Development at the site consists of facilities related to the commercial aquaculture business, residential buildings, and a horse paddock.

PROPERTY OWNER: National Park Service, U.S. Department of the Interior

CURRENT LESSEE AND ENTITY SUBJECT TO THIS ORDER: Johnson Oyster Company, Inc.

VIOLATION DESCRIPTION: Failure to obtain a coastal development permit from the Commission for: (1) construction of several commercial buildings, additions to pre-Coastal Act buildings, and a horse paddock; (2) permanent placement at the site of a mobile home, three metal storage/ refrigeration containers, and an above-ground diesel fuel tank and a concrete containment structure; (3)

drainage of wastewater from a commercial aquaculture operation onto land and into the estuary; and (4) storage of oyster cultivation equipment and disposal of refuse in the estuary and along the shore where it has the potential to impair the water quality and biological health of the estuary.

**SUBSTANTIVE DOCUMENTS:** Commission Notice of Intent to issue a Cease and Desist Order dated October 23, 2003 (EXHIBIT A); Commission Consistency Certification No. CC-34-84 (EXHIBIT B); Stipulated Agreement Between Parties and Order in County of Marin v. Johnson Oyster Company, Inc., Superior Court Case No. 165361 (EXHIBIT C), Exhibits A-F.

**CEQA STATUS:** Exempt (CEQA Guidelines (GC) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2) and (3), 15307, 15308 and 15321).

## **I. SUMMARY**

The Johnson Oyster Company, Inc. (JOC) operates a commercial aquaculture business on land that it has leased from the National Park Service (NPS) since 1972.<sup>1</sup> The long-term lease is scheduled to expire in 2012. Drakes Estero, including the area that JOC is leasing, has been designated by Congress as a potential wilderness area pursuant to the Wilderness Act of 1964.<sup>2</sup> NPS has informed Staff that it cannot, under this Act, extend or renew JOC's lease when it expires in 2012 because the estuary and surrounding land will convert to wilderness, and the continued operation of a commercial aquaculture facility is inconsistent with the wilderness designation.

JOC's Coastal Act violation is the failure to obtain a coastal development permit (CDP) to authorize: (1) construction of several commercial buildings, additions to pre-Coastal Act structures<sup>3</sup>, and a horse paddock; and (2) permanent placement of a mobile home, three metal storage/refrigeration containers, and an above-ground diesel fuel tank and a concrete containment structure; (3) drainage of waste water from the shucking room and retail building onto the ground and into the estuary; and (4) storage of oyster cultivation equipment and disposal of

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<sup>1</sup> NPS purchased the property from JOC in 1972 as part of the land acquisition for the Point Reyes National Seashore.

<sup>2</sup> P.L. 88-577, 78 Stat. 890 as amended 16 U.S.C. 1131 (note), 1131-1136).

<sup>3</sup> The structures that pre-date the Coastal Act include the building that currently houses the shucking room and retail counter, the two houses, and two of the four mobile homes.

refuse in the estuary and along the shore where it has the potential to impair the water quality and biological health of the estuary. The precise dates that the development was performed are unknown but all the development that is the subject of this Cease and Desist Order (CDO) was performed after the Coastal Act was enacted. (Photographs of the site taken by Staff showing some of the unpermitted development are attached as EXHIBIT D).

Some portions of the unpermitted development, namely the storage of the oyster cultivation equipment and disposal of refuse in the estuary and along the shore, and the drainage of the waste water onto the ground and into the estuary have the potential to impair the water quality and biological health of the estuary and need to be addressed immediately.

In addition, Staff is coordinating with the County of Marin (County) and NPS to resolve the Coastal Act violations at the site. Staff recommends the Commission issue this CDO pursuant to the authority of Section 30810 of the Coastal Act. This Order would require JOC to: (1) cease and desist from maintaining unpermitted development at the site, (2) address the unpermitted development at the site that poses an immediate threat to the water quality and biological health of the estuary, (3) submit for approval of the Executive Director a plan to remove the unpermitted development at the site that the Commission would be unlikely to find consistent with Coastal Act policies, remediate coastal resource impacts and restore the site, (4) submit an application for a CDP to authorize after-the-fact the unpermitted development that occurred after 1976, which the Commission may find to be consistent with Coastal Act policies,<sup>4</sup> and (5) fully implement the approved removal and restoration plan.

## II. HEARING PROCEDURES

The procedures for a hearing on a proposed CDO are outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The CDO hearing procedure is similar in most respects to the procedures the Commission utilizes for permit and LCP matters.

For a CDO hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their

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<sup>4</sup> The unpermitted development that occurred at the site after 1976 and may be found to be consistent with Coastal Act policies includes one mobile home, some of the oyster cultivation equipment and materials in use in the estuary, and the recently constructed horse paddock.

representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue this CDO, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of this CDO.

### **III. MOTION**

MOTION 1: I move that the Commission issue Cease and Desist Order No. CCC-03-CD-12 pursuant to the Staff recommendation and Findings.

#### Staff Recommendation of Approval:

Commission staff recommends a **YES** vote. Passage of the motion results in adoption of the following resolution and findings and the issuance of Cease and Desist Order No. CCC-03-CD-12. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### Resolution to issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-03-CD-12 set forth below and adopts the proposed findings set forth below on the grounds that JOC has conducted development without a coastal development permit and in so doing has violated the Coastal Act.

### **IV. PROPOSED FINDINGS**

#### **A. Coastal Act Authority**

This CDO is being issued pursuant to Section 30810 of the Coastal Act, which provides in relevant part:

- (a) *If the Commission, after public hearing, determines that any person... has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit...*
- (b) *The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

The Coastal Act defines "person" as "any individual, organization, partnership, limited liability company, or other business association or corporation, including any utility, and any federal, state, local government, or special district or an agency thereof."

#### B. Unpermitted Development

Coastal Act Section 30600(a) requires that any person wishing to undertake development in the coastal zone shall obtain a coastal development permit from the Commission or the local government (in addition to any other permit required by law). Development is defined in Section 30106 of the Coastal Act as "on land, in or under water, the placement or erection of any solid material or structure;" and "construction, reconstruction, demolition, or alteration of the size of any structure."

Under the Coastal Act, coastal development permits are required for all new "development." The unpermitted development by JOC that has occurred or is occurring consists of failure to obtain a CDP for: (1) construction of several commercial buildings and storage sheds, a horse paddock, and modifications to buildings that pre-date the Coastal Act,<sup>5</sup> (2) placement at the site of a mobile home, three storage/refrigeration containers, and an above-ground diesel tank with a concrete containment structure, (3) drainage of wastewater from the shucking room and retail building onto land and into the estuary; and (4) storage of oyster cultivation equipment and disposal of refuse (i.e. unused racks, piles of wire hangers with rubber tubing, nylon mesh bags, plastic milk crates, nylon rope, etc.) in the estuary and along the shore. These instances of unpermitted development are inconsistent with the requirements of Sections 30231 and 30250 of the Coastal Act.

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<sup>5</sup> The structures that pre-date the Coastal Act consist of the building that currently houses the shucking room and retail counter, the two houses, and two of the four mobile homes at the site. In 1984, the Commission authorized an additional mobile home at the site through Consistency Certification No. CC-34-84. The unpermitted modifications to the structures that pre-date the Coastal Act are subject to the terms of the Consent Order.

Notwithstanding federal ownership of the land and the estuary, development at the site, including demolition, modification, removal or retention of any of the existing structures, and/or construction of any new structures requires Commission authorization. Moreover, the cleanup of the waterfront, including removal of the oyster cultivation equipment and refuse may involve activities which are development under the Coastal Act, and therefore also require Commission authorization. The Commission can authorize development through a CDP, or authorize removal of development through a CDO or a restoration order. Any new development not authorized under this CDO or the plan submitted by JOC pursuant to this CDO and approved by the Executive Director, or retention of any existing development constructed after the Coast Act, will require JOC to submit an application to the Commission for CDP. Nothing in this CDO shall be interpreted or construed to represent Commission approval any new or existing development that may be proposed in the plan that JOC is required to submit pursuant to this Order.

C. Coastal Resource Impacts<sup>6</sup>

Section 30231 provides:

*The biological productivity and the quality of coastal waters, stream, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges...*

Section 30250 provides:

*(a) New residential, commercial, or industrial development... shall be located ... where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

The unpermitted development has the potential to adversely affect the water quality and biological health of the estuary. For example, in one of the storage sheds with an earthen floor near the estuary, drums of used motor oil and/or gasoline are being improperly stored and it appears that some oil has overflowed onto the earthen floor. This oil may either be carried into the estuary by surface runoff or seep into the estuary and contaminate the water quality and impair the biological health of the estuary. In addition, the building that contains the shucking room and the retail counter lacks an adequate septic system and therefore, the wastewater from the floor and the sinks drains directly onto the ground and into the estuary.

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<sup>6</sup> We note that a cease and desist order under Coastal Act §30810 can be issued for unauthorized development and does not require a showing of resource damages, but we provide this information for background purposes.

As previously mentioned, there is an unpermitted above ground storage tank in a compromised concrete containment structure. The storage tank was used for diesel gas but is no longer in use. It is unknown whether the storage tank still contains fuel. A wooden pole penetrates the floor of one of the compartments and appears to compromise the structural integrity of the container. Thus, if there were to be a leak, the fuel would seep directly into the soil around the tank. This fuel could either be carried into the estuary by surface runoff or seep into the estuary and contaminate the water quality and impair the biological health of the estuary.

Although construction of a horse paddock does not necessarily create a problem for water quality, confined animal facilities should be sited and designed to manage, contain, and dispose of animal waste using best management practices (BMPS) to insure that waste is not introduced to water bodies, surface runoff or groundwater. Although the subject paddock is not directly adjacent to the estuary, unless BMPs are used, animal waste may be carried into the estuary or a tributary of the estuary by surface runoff and contaminate the water quality and impair the biological health of the estuary. During a site visit, Staff observed no evidence of any such BMPs in use.

Unused oyster cultivation equipment and refuse including racks, piles of wire hangers with rubber hose, nylon mesh bags, nylon rope, and plastic milk crates are being stored or have been disposed of in the estuary and along the shore. This equipment and refuse appears to be trapping eelgrass, which would otherwise be carried away by the tide. The accumulation of this debris along the shore has degraded the near shore habitat for infauna biota.

The wastewater, spilled motor oil, animal waste, deterioration and decay of the unused aquaculture equipment and refuse, and accumulation of debris on the shoreline has the potential to impair the water quality and impair biological health of the estuary.

#### D. Background

The enforcement of JOC's Coastal Act violations is being coordinated with the County and NPS, which are attempting to bring JOC into compliance with County zoning ordinances and the terms of the tenancy agreement with NPS.

On October 6, 2003, Commission staff accompanied NPS staff on a site visit to Johnson's facility at Drakes Estero. During that visit, Staff observed: several commercial structures that were constructed without a CDP; unpermitted modifications to buildings that pre-date the Coastal Act; structures that have been permanently placed at the site without a CDP; and potential impacts to the water quality of the estuary from waste water draining from the shucking room and retail building onto the ground and into the estuary, spilled motor oil, and

storage and/or disposal of oyster cultivation equipment and refuse (i.e. racks, piles of wire hangers with rubber tubing, nylon mesh bags, nylon rope, and plastic milk crates) in the estuary and along the shore.

The County has been attempting to resolve numerous zoning, building and health code violations at the site since the late 1980s. In September 1995, the County filed a complaint for injunctive relief to enjoin JOC from continuing to violate County codes and require JOC to remedy the violations. In January 1997, the County and JOC entered into a stipulated agreement to resolve the litigation. The Agreement required JOC to submit plans and obtain permits for improvements at the site to resolve the various violations, including construction of a new processing plant, removal of all but four mobile homes and two houses<sup>7</sup>, installation of a residential septic system to service the houses and the mobile homes. The Agreement also required JOC to obtain permits to drill a well and operate a retail food establishment, and for all the development that has occurred at the site without a CDP or a building permit. With the exception of the septic system installation, JOC has failed to comply with the terms of the Agreement.

In October, 2003, JOC proposed a conceptual plan to the Commission and NPS that would allow them to continue cultivating oysters in the estuary but would relocate the processing facility off-site and remove a "significant portion of the structures" and the illegal modifications to the legal structures (EXHIBIT E). JOC proposes to retain at the site an existing dock to load and unload oysters, a building to house the tanks for seeding the oysters and a room to string and bay the seeded shells, and the residential structures with the septic system. JOC also proposes to continue to operate a small retail business, which is currently being run out of a building that pre-dates the Coastal Act. JOC is hoping that the proposed changes would eliminate the need for a commercial wastewater treatment system, however, the County has indicated that the applicable zoning code requires that retail food establishments have running water and bathrooms.

On November 21, 2003, Johnson's attorney, Robert Oliker, submitted a Statement of Defense on behalf of JOC (EXHIBIT F) and declined to agree to a consent cease and desist order to resolve the violations. Mr. Oliker indicated to Staff that JOC could not agree to a consent order that would require it to remove the unpermitted development and restore the site before JOC has an opportunity to receive feedback from the County and NPS regarding its conceptual plan and alternative options that would allow JOC to continue operating at the site.

Staff believes issuance of this CDO would provide a means to address the immediate threats to the water quality and biological health of the estuary, and

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<sup>7</sup> The houses and two of the mobile homes existed at the site prior to the Coastal Act. In 1984, the Commission authorized one additional mobile home at the site through Consistency Certification No. CC-34-84.



provide a framework to bring the JOC and the site into compliance with Coastal Act policies. Staff plans to work with the County and NPS toward that end.

E. Allegations

- (1) JOC failed to obtain a CDP to construct several commercial buildings, additions to buildings that pre-date the Coastal Act, and a horse paddock. (Not admitted)
- (2) JOC failed to obtain a CDP to authorize the permanent placement at the site of a mobile home, three large refrigeration/ storage containers and an above ground diesel tank with a concrete storage container. (Not admitted)
- (3) JOC is draining wastewater from the shucking room and the retail building directly onto the ground and into the estuary. (Not admitted)
- (4) JOC is storing oyster cultivation equipment and has disposed of refuse in the estuary and along the shoreline that may be impairing the water quality and biological health of the estuary through deterioration and decay, and by trapping eel grass. (Not admitted)

F. Statement of Defense

- (1) *Johnson does not admit any of the allegations as set forth in the October 23, 2003 Notice of Intent to Commence Cease and Desist Order. Johnson denies all allegations as set forth in the October 23, 2003 Notice of Intent to Commence Cease and Desist Order.*

Commission Response:

Despite these denials, the fact remains that JOC has been the only lessee of the property where the unpermitted development occurred since NPS acquired the property in 1972. In addition, NPS has confirmed that JOC is responsible for the unpermitted development at the site and JOC has been using the unpermitted development continuously since it occurred. JOC does not claim that the Commission has authorized the development addressed in this CDO and no application seeking Commission approval for the unpermitted development was ever received from JOC, nor was this development ever authorized through a CDP or Consistency Certification.

- (2) *Johnson's was of the belief that they were in compliance with existing law, or had extensions to do so.*

Commission Response:

The "extensions" cited by JOC appear to refer to the work that was required under the Stipulated Agreement, executed by JOC and Marin County on January 9, 1997. Despite any extensions that the County or NPS may have granted, JOC nevertheless failed to obtain the permits that it was required to seek under the Agreement, including the necessary CDPs. Moreover, much of the unpermitted development that is the subject of this CDO pre-dates the Stipulated Agreement, so the fact that extensions may have been granted to bring the site into compliance is not relevant.

JOC was aware of the requirement to obtain a CDP for the unpermitted development at the site. In 1984, JOC sought and obtained a Consistency Certification for an additional mobile home at the site (EXHIBIT B).<sup>8</sup> In 1997, JOC submitted two applications for CDPs to the Commission for construction of a new processing facility and installation of a new septic system. Johnson's submittal of applications for the consistency certification and the CDPs demonstrates that JOC was aware of the requirement to obtain Commission authorization for new development at the site.

JOC also asserts that it relied on its attorney's representation that it was in compliance with applicable laws. While this is a factor that a court might consider in assessing civil penalties and punitive damages, it is not relevant to the determination of whether JOC conducted unpermitted development that violated the Coastal Act. Nor is it relevant to whether JOC should be ordered to cease conducting unpermitted development that violates the Coastal Act and to remove such development. This CDO is appropriate to respond to the violations that already occurred, regardless of JOC's intent."

- (3) *To the extent there has been delay in securing compliance, much of that delay was caused by governmental entities who failed to timely issue permits.*

Commission Response:

Although the Commission has no first-hand knowledge of any such delays, Staff would note that it has been six years since the Stipulated Agreement and JOC has still not fully complied with the terms of the Agreement. As previously stated, much of the unpermitted development at the site pre-dates the Stipulated Agreement, so any delays caused by other agencies in complying with the terms of the Agreement are not relevant. We also note that although not required by the Coastal Act, Staff is working with the County and NPS to resolve the violations at the site.

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<sup>8</sup> Consistency Certification No. CC-34-84, approved December 12, 1984.

Some portions of the unpermitted development such as construction of the office, the horse paddock, and storage of the oyster cultivation equipment and disposal of refuse in the estuary and along the shore were not addressed in the Stipulated Agreement and occurred since the Stipulated Agreement. As noted above, JOC was aware of the permit requirements of the Coastal Act. Moreover, JOC has not submitted an application to the Commission seeking approval for the development addressed in this CDO, so failure to obtain a CDP from the Commission cannot be attributed to governmental delay.

G. CEQA

The Commission finds that issuing an order to: cease and desist from maintaining unpermitted development in violation of the Coastal Act, submit a plan to remove the unpermitted development, and restore the site is consistent with the requirements of the California Environmental Quality Act (CEQA) of 1970 and will have no significant adverse effects on the environment, within the meaning of CEQA. This CDO is exempt from the requirements for the preparation of an environmental impact report based upon Sections 15060(c)(2), and (3), 15061(b)(2) and (3), 15307, 15308 and 15321 of CEQA Guidelines.

Exhibits

- A. Commission Notice of Intent to issue a Cease and Desist Order dated October 23, 2003.
- B. Commission Consistency Certification No. CC-34-84, authorizing the placement of an additional mobile home at the site.
- C. Stipulated Agreement Between Parties and Order in County of Marin v. Johnson Oyster Company, Inc., Superior Court Case No. 165361.
- D. Photographs of JOC taken by Staff on October 6, 2003.
- E. Correspondence from JOC attorney Robert Olikier to Alexis McBride (Marin County), Don Neubacher (National Park Service), Nancy Cave (Coastal Commission), Tom More (CA Dept. of Fish and Game), and Debbie Poiani (Marin County) dated October 30, 2003 regarding the future operation of Johnson Oyster Company, Inc.
- F. Statement of Defense submitted by attorney Robert P. Olikier on behalf of Johnson Oyster Company, Inc. dated November 21, 2003.

**CALIFORNIA COASTAL COMMISSION**

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VIA REGULAR AND CERTIFIED MAIL

October 23, 2003

**INTENT TO COMMENCE CEASE AND DESIST ORDER PROCEEDING**

Tom Johnson  
Johnson Oyster Company  
P.O. Box 68  
Inverness, CA 94937

Subject: Commission Cease and Desist Order Proceeding

Property Location: 17171 Sir Francis Drake Boulevard, Point Reyes  
National Seashore

Coastal Act Violation: Performing development without a coastal development permit including but not limited to: construction of commercial buildings, additions and modifications to pre-Coastal Act commercial buildings, permanent placement of metal storage and refrigeration containers and an above-ground diesel fuel tank and concrete containment structure at the site, drainage of waste water from a commercial aquaculture operation onto land and into the Drakes Estero, and storage of equipment in the tidal zone where it may cause impacts to water quality.

Dear Mr. Johnson:

Pursuant to the requirements of 14 California Code of Regulations, Section 13181(a), I am writing to you to inform you that I am recommending a Cease and Desist Order (CDO) proceeding against Johnson Oyster Company (JOC) regarding the unpermitted development above. The Commission's authority to issue a CDO against persons violating the Coastal Act is contained in Section 30810 of the Coastal Act.

The CDO would require JOC to cease and desist from undertaking or maintaining unpermitted development at the site, and to submit an application for a coastal development permit to authorize removal or retention of the unpermitted development, and the installation of a septic system to service the commercial aquaculture operation. Pursuant to Section 30810(b), the CDO may be subject to such terms and conditions as the Commission may determine are

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT A

Page 1 of 5

necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

### **Unpermitted Development**

Coastal Act Section 30600(a) requires that any person wishing to undertake development in the coastal zone shall obtain a coastal development permit from the Commission or the local government in addition to any other permit required by law. Development is defined in Section 30106 of the Coastal Act as "on land, in or under water, the placement or erection of any solid material or structure;" and "construction, reconstruction, demolition, or alteration of the size of any structure."

Under the Coastal Act, coastal development permits are required for all new "development." The unpermitted development by JOC that has occurred or is occurring consists of: (1) construction of commercial buildings and modification of pre-Coastal Act buildings, including but not limited to an office, shucking sheds, storage sheds, a storage area/garage, (2) permanent placement on the site of storage and refrigeration containers and an above-ground diesel tank with a inadequate concrete containment structur, (3) drainage of wastewater from the shucking shed and retail building onto land and into the Estero, and (4) storage of commercial aquaculture equipment (i.e. unused racks, piles of wire hangers with rubber tubing, nylon mesh bags, plastic milk crates, nylon rope, etc.) in the tidal zone. This development appears to be inconsistent with the requirements of Sections 30231 and 30250 of the Coastal Act.

### **Coastal Resource Impacts<sup>1</sup>**

JOC is located at the north end and on the eastern shore of Drakes Estero about 0.5 miles due south of Sir Francis Drake Boulevard in The Point Reyes National Seashore. The property is owned by the National Park Service (NPS) and leased to JOC. Drakes Estero was designated as a potential wilderness area<sup>2</sup> within the Point Reyes National Seashore. This designation means that a higher standard of resource protection, including water quality, is required in the Estero than in other areas of the National Seashore.

On October 6, 2003, Commission staff accompanied NPS staff on a site visit to JOC. NPS and the County of Marin have been attempting to resolve numerous building code and health code violations at the site since the late 1980s and have been involved in litigation with JOC regarding those violations. On March

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<sup>1</sup> We note that a CDO under Coastal Act §30810 can be issued for unpermitted development and does not require a showing of resource damages, but we provide this information for background purposes.

<sup>2</sup> Pursuant to the Wilderness Act of 1964 (P.L. 88-577, 78 Stat. 890 as amended 16 U.S.C. 1131 (note), 1131-1136).

18, 1997, NPS, the County of Marin and JOC executed a Court ordered settlement agreement that required JOC to resolve the violations. With the exception of repairing a residential septic system, JOC has failed to comply with the requirements of the agreement. NPS staff provided Commission staff with records documenting several Coastal Act violations at the site. Commission staff also observed the unpermitted development previously described.

Section 30231 provides:

*The biological productivity and the quality of coastal waters, stream, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges...*

Section 30250 provides:

*(a) New residential, commercial, or industrial development... shall be located ... where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

The shucking room and the retail building lack an adequate septic system and the wastewater from the floor and the sinks drains directly into Drakes Estero (Estero). In one of the storage sheds with an earthen floor near the Estero, drums of used motor oil and/or gasoline are being improperly stored and it appears that some oil may have overflowed onto the ground. As previously mentioned, there is an unpermitted, above-ground storage tank in an inadequate concrete containment structure. The storage tank was used for diesel gas but is no longer in use. It is unknown whether the storage tank still contains fuel. A wooden pole penetrates the floor of one of the compartments and appears to compromise the structural integrity of the container.

In addition, equipment associated with the commercial aquaculture operation including piles of wire hangers with rubber hose, nylon mesh bags, nylon rope, and plastic milk crates are being stored or have been discarded in the tidal zone of the Estero. The previously mentioned wastewater, spilled motor oil, and old equipment and debris in the water and in the tidal zone of the Estero may be degrading the water quality of the Estero.

### **Cease and Desist Order**

JOC is subject to issuance of a CDO as the entity that has undertaken, allowed or maintained the unpermitted development. Consistent with Coastal Act Section 30810(a), the proposed CDO would require JOC to: (1) cease and desist from undertaking or maintaining unpermitted development at the site, (2)

immediately remove the unpermitted development that may be causing damage to coastal resources, including the commercial aquaculture equipment and debris being stored in the tidal zone, and drainage of wastewater onto the ground and into the Estero, (3) submit a complete application for a CDP by December 1, 2003 to install a septic system for the commercial aquaculture operation or connect the commercial buildings to the existing residential septic system, either remove or retain the unpermitted commercial buildings at the site, storage and refrigeration containers, and the above-ground diesel tank. Commission staff does not believe retention of the unpermitted buildings and containers would be consistent with the Chapter 3 policies of the Coastal Act and therefore staff is unlikely to recommend approval of an ~~amend-~~ ~~in-~~ ~~fact~~ permit.

Section 30810(b) provides that the CDO may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

### **Coastal Act Authority**

Pursuant to Public Resources Code Section 30810, the Commission has the authority to order any person to cease and desist violating the Coastal Act if the Commission, after a public hearing, determines that any person has engaged in activity that requires a coastal development permit from the Commission without securing the permit. Additionally, pursuant to Section 30810(b), the CDO may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Please be advised that if the Commission issues a CDO, Coastal Act Section 30821.6(a) authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order for each day in which the violation persists. The penalty for intentionally and negligently violating a CDO or a restoration order can be as much as \$6,000 per day for as long as the violation persists.

At this time, the Commission is planning to hold a hearing on the issuance of a CDO in this matter at the Commission meeting that is scheduled for the week of December 12, 2003.

In accordance with the California Code of Regulations Sections 13181(a) and 13196, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. The completed Statement of Defense form must be received by this office no later than November 12, 2003.

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

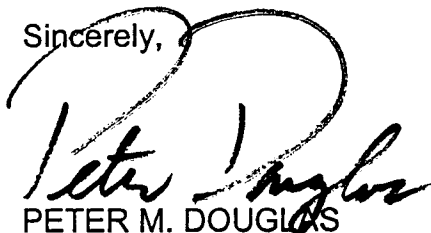
EXHIBIT A

Page 4 of 5



If you have questions concerning the filing of the Statement of Defense form, please contact Chris Darnell in the Commission's Enforcement Unit at 415-904-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Douglas". The signature is written in a cursive style with a large, looping initial "P".

PETER M. DOUGLAS  
Executive Director

Enclosure

cc: Lisa Haage, Chief of Enforcement  
Nancy Cave, Northern California Enforcement Supervisor  
Marina Corzola, Environmental Specialist, Energy and Aquaculture  
Derek Lee, Environmental Specialist, Water Quality  
Robert Olicer, Attorney

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT A

Page 5 of 5

STAFF REPORT AND RECOMMENDATION  
ON CONSISTENCY CERTIFICATION

Consistency Certification No.: CC-34-84  
Hearing Date: 12/11-14/84  
Staff Report: 11/30/84  
Staff: LF-SF  
6 Month Period Ends: 5/5/85

APPLICANT FOR  
FEDERALLY LICENSED  
OR PERMITTED ACTIVITY: Johnson Oyster Co., Inc.

ACTIVITY DESCRIPTION: Placement of one additional house trailer on property supporting aquaculture facilities leased from the National Park Service.

ACTIVITY LOCATION: Drake's Estero, Point Reyes National Seashore, Marin County.

SUBSTANTIVE FILE DOCUMENTS:

1. Consistency Certification submitted by letter dated November 2, 1984.

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Summary

A. Project Description. Johnson Oyster Company operates aquaculture facilities on land leased from the National Park Service on Drake's Estero at Point Reyes National Seashore. The company maintains plant facilities and housing for employees.

The applicant has applied for permission under the long-term lease back to place an additional house-trailer on the property for purposes of employee housing.

B. Applicant's Consistency Certification and Findings: The applicant has certified that the project is consistent with the State Coastal Management Program and all activities will be conducted in a manner consistent with that program. In its consistency certification the applicant concluded that the proposed activity will support a coastal-dependent use and will hookup to an existing septic system which is adequate to protect marine resources.

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT B

Page 1 of 5

II. Staff Recommendation: Concurrence

The staff recommends that the Commission adopt the following resolution:

The Commission hereby concurs in the consistency certification made by Johnson Oyster Company Inc., finding that the proposed project is consistent with the policies of the California Coastal Management Program.

III. Findings and Declaration:

The Commission finds and declares as follows:

A. Public Access. Sections 30210-30214 of the Coastal Act assure that maximum public access is provided and protected. New development from the nearest public roadway to the shoreline is required to provide public access except where it is inconsistent with public safety, military security or protection of fragile resources, or agriculture would be adversely affected or adequate access exists nearby.

The subject property is located between the first public road and the sea on land within the Point Reyes National Seashore.

While the development of mariculture support facilities onshore may adversely affect public access to and along the shoreline, this facility is located on public lands and is maintained on a long-term lease back from the National Park Service. After the operation ceases the land will revert to National Park use, and public use and recreation of this area of the shoreline will be assured.

In addition, there are several trails in the immediate area, both toward the Point and along the length of the Estero. The National Park Service has visitor signs and support facilities nearby. The Commission therefore finds that the addition of this house trailer will not adversely effect public access and use of the shoreline.

B. Aquaculture. Section 30222.5 of the Coastal Act states:

Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

Section 30255 also provides that when appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

The applicant has maintained approximately 1060-acres of State Water Bottom Allotments in oyster production for approximately 30 years.

The proposed trailer will provide support facilities for the continued operation of this coastal dependent use.

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT B

Page 2 of 5

C. Marine Resources. Sections 30230, 30231 of the Coastal Act provides:

Section 30230.

Marine Resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The project as proposed will place an additional house trailer on the upland site adjacent to the aquaculture facilities. No grading or landform alteration is proposed.

The house trailer will hook-up to the existing septic system. To prevent impacts from seepage from the leach field, the applicant pumps its waste over a hill to a leach field located at a greater distance from Drakes Estero.

While the project is proposed on federal land, the applicant is still required to obtain a use permit from Marin County. As noted in the County's LCP, the County through this use permit will assure that the septic system is adequate to meet requirements of the Regional Water Quality Control Board or Marin County Code, whichever is more stringent.

Through this subsequent review, the adequacy of the existing septic system to accommodate the additional trailer will be assured.

The Commission therefore finds that the protection of water and marine resources is assured.

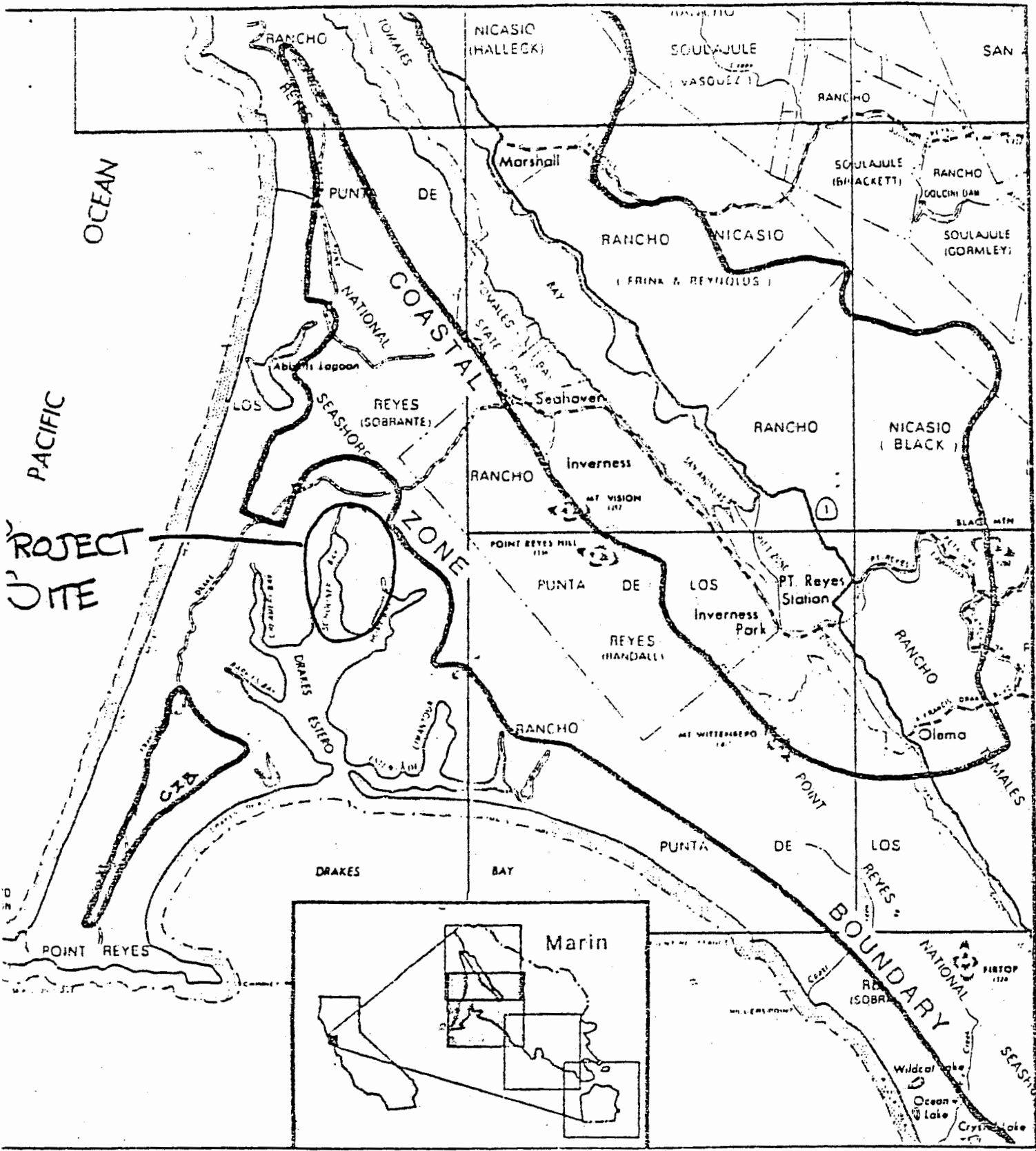
The Commission therefore finds that the project as proposed is consistent with the access, recreation, new development and marine resource provisions of the California Coastal Management Program.

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT B

Page 3 of 5



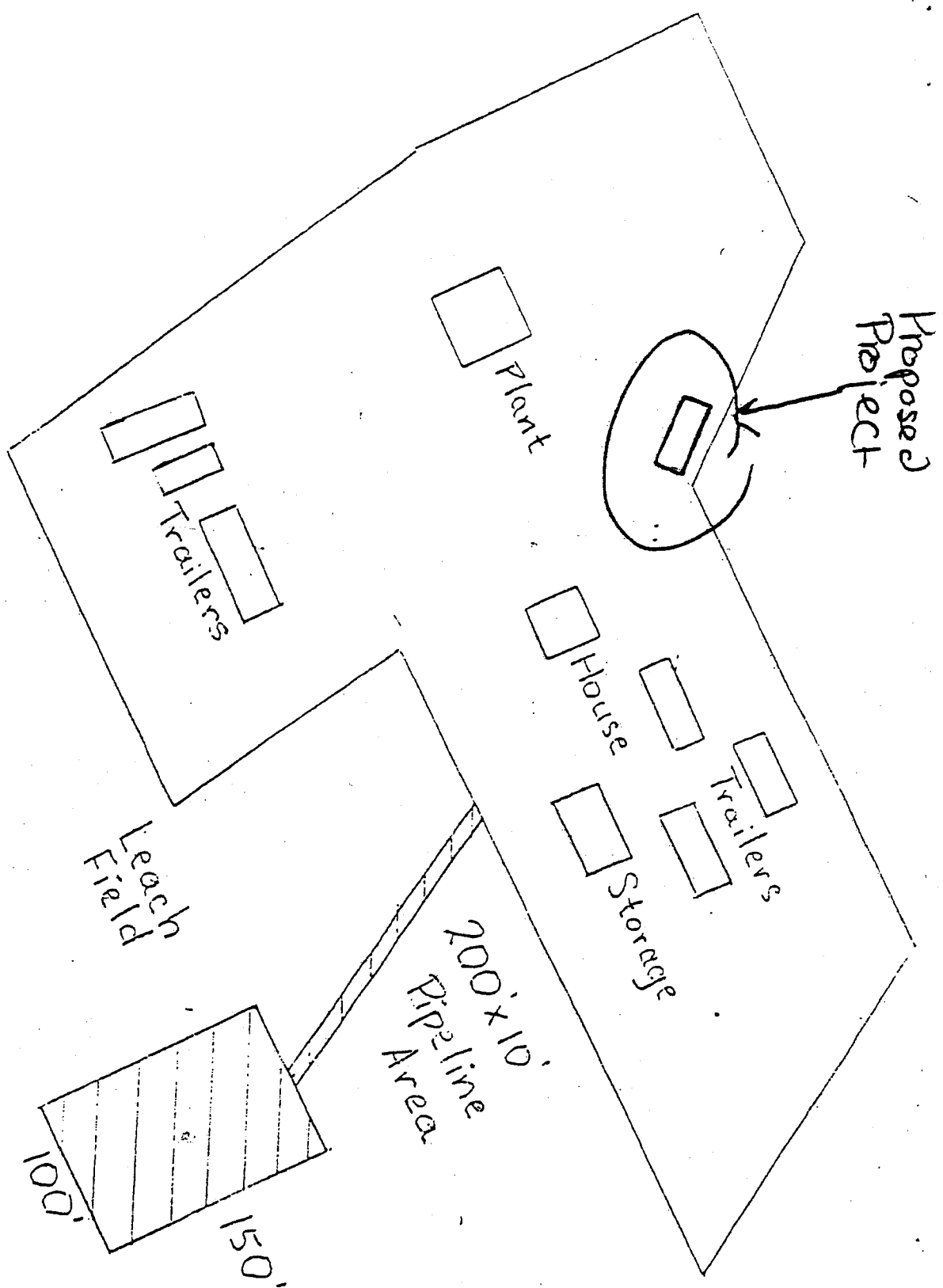
California Coastal Commission

## LOCATION MAP

0 1 2  
miles

N

Johnson Oyster Co.



Area Covered by this  
Special Use Permit (024AC)

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT B

Page 5 of 5

CC-34-84  
EXHIBIT?

COPY

FILED

1 THOMAS G. HENDRICKS, County Counsel (State Bar #35025)  
2 ALEXIS J. McBRIDE, Deputy (State Bar #97367)  
3 Suite 342, Civic Center  
4 San Rafael, California 94903  
5 Telephone: 1 (415) 499-7890  
6 Fax: 1 (415) 499-3796

MAR 21 1997

7 Attorneys for Plaintiffs

JOHN P. MONTGOMERY,  
Court Executive Officer  
MARIN COUNTY COURTS  
By: C. Baker, Deputy

8 SUPERIOR COURT OF CALIFORNIA  
9 FOR MARIN COUNTY

10  
11 PEOPLE OF THE STATE OF  
12 CALIFORNIA, acting by and through the  
13 COUNTY OF MARIN,

NO. 165361

STIPULATED AGREEMENT BETWEEN  
THE PARTIES AND ORDER

14 Plaintiffs,  
15 vs.

16 JOHNSON OYSTER COMPANY,  
17 INCORPORATED, TOM JOHNSON AND  
18 DOES 1-20 INCLUSIVE

Defendants.

ALICIA FLORES, et al.

Intervenors.

19 This stipulation is entered into this 9<sup>th</sup> day of January 1997 by and between  
20 the parties. For the purposes of this Agreement, all time frames shall run from the date that the  
21 Judge of the Superior Court signs this Agreement, unless otherwise specified.

22 1. The parties hereto agree that a design review application with a site plan  
23 showing the proposed improvements locate don the subject property at 17171 Sir Francis Drake  
24 Boulevard, Inverness, AP # 109-130-17), will be prepared by JOHNSON OYSTER COMPANY,  
25 INC. (hereinafter JOC) and submitted to Community Development Agency, Planning Division,  
26 within 45 days from the date of this agreement.

27 2. The parties and the U.S. Park Service have agreed that no more than four  
28

Item Th-16a

1 mobile homes and two residences may remain on the subject property after September 30, 1996.  
 2 To accommodate this agreement, five intervenors, namely Juan-Jose Pelayo, Alicia Flores, Aida  
 3 Pelayo, Manuel R. Pelayo and Marin Pelayo ("the Relocated Intervenors") and their families  
 4 reached a seperate agreement with JOC under the terms of which those families timely relocated.  
 5 JOC and the Relocated Intervenors agree to work in good faith to formalize that seperate  
 6 agreement within 15 days.

7           3. A septic system that meets current standards shall be designed and all  
 8 necessary permits and approvals from Environmental Health Services Division of the Community  
 9 Development Agency shall be obtained within 30 days of the date submitted. This system shall  
 10 be constructed within six weeks of approval of septic system permit and coastal permit. This  
 11 system shall have adequate capacity to process the waste that is produced form the uses and  
 12 operations specifically allowed under this agreement. Unit such time as this septic system is  
 13 approved, built and fully functioning, defendants shall pump the failed septic system tank and  
 14 provide to Environment heal Services receipts for such pumping on a weekly basis. For good  
 15 cause,including but not limited to, inclement weather, an extension of time to construct the  
 16 approved system may be granted in writing by Environmental Health Services after written request  
 17 for such extension by JOC.

18           4. A permit to drill a well shall be obtained from the Environmental Health  
 19 Services Division of the Community Development Agency within 90 days of the date of this  
 20 agreement.

21           5. A retail food establishment permit shall be obtained from the Environmental  
 22 Health Services Division of the Community Development Agency within 90 days of the date of  
 23 this agreement.

24           6. A Coastal Permit shall be obtained from the California Coastal Commission  
 25 within 120 days of the date of this agreement.

26           7. Building permits shall be obtained from the Marin County Community  
 27 Development Agency, Building Inspection Division for all work completed without building  
 28 permits and building permits shall be obtained for any work requiring such permits prior to



1 commencement of work.

2           8. Building permits shall be obtained from the Marin County Community  
3 Development Agency, Building Inspection Division for the structures adjacent and appurtenant  
4 to the remaining trailers.

5           9. Building permits shall be obtained from the Marin County Community  
6 Development Agency, Building Inspection Division for the addition to the house.

7           10. Building permits shall be obtained from the Marin County Community  
8 Development Agency, Building Inspection Division for the wiring, plumbing, propane tanks, the  
9 well house, and any new improvements. JOC will either obtain a permit for the retail sales  
10 office expansion, the second story addition, the three sided structure used for stringing of the  
11 oyster shells and the containers used for storage and refrigeration OR submit a permit application  
12 for replacement structures to serve the same use as that of commercial oyster production.

13           11. JOC may continue operation of the processing plant, algac shed, the growing  
14 shed, the retail sales office, the second story addition and the three-sided stringing shed and the  
15 containers used for storage and refrigeration if the design review and required permits are  
16 submitted in a timely basis as required by paragraph 10. JOC may continue the above operations  
17 in their present locations until construction is completed on the replacement structures.  
18 Construction under the permits will commence upon issuance and continue in a timely fashion to  
19 be completed within 24 (twenty four) months. If any of the operations and structures above have  
20 not obtained required building or replacement permits, or if the permit applications are  
21 denied, withdrawn or if construction is not completed within 24 months of obtaining the permit  
22 then operations shall cease and the structures shall be removed.

23           12. Any use, operation or structure for which all required permits have not been  
24 obtained within the time deadlines of this agreement shall be immediately terminated and removed  
25 from the property. This includes all uses, operations and structures whether they be residential,  
26 commercial or agricultural.

27           13. All permits required by this agreement shall be obtained within 90 days of  
28 this agreement unless otherwise specified. Extensions of time to obtain permits or complete

1 construction may only be granted by the issuing agency in writing after written request for such  
2 extension by JOC.

3 14. Staff members of all divisions of the Marin County Community  
4 Development Agency shall upon 48 hours notice, be granted entry onto the property to ensure  
5 compliance with this agreement.

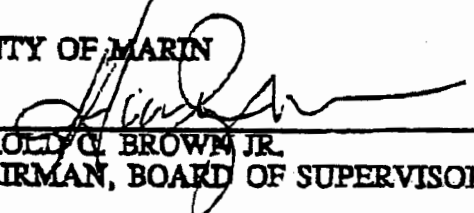
6 15. The Court shall retain jurisdiction for the purposes of enforcement of this  
7 Stipulated Agreement and of the agreement between JOC and the Relocated Intervenor.

8 16. The County shall dismiss their action for injunctive relief within 30 days of  
9 the date of this agreement.

10 17. Plaintiff reserves the right to obtain a judgment pursuant to CCP 664.6

11 **FOR THE PLAINTIFFS:**

12 COUNTY OF MARIN

13 By   
14 HAROLD C. BROWN JR.  
15 CHAIRMAN, BOARD OF SUPERVISORS

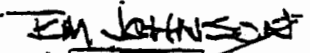
Date 3/5/97

16 By   
17 ALEXIS I. MCBRIDE  
18 Attorney for Plaintiffs


Date 1/10/97

19 **FOR THE DEFENDANTS:**

20 JOHNSON OYSTER COMPANY, INC. and  
21 TOM JOHNSON

22 By   
23 TOM JOHNSON

Date 1/10/97

24 By   
25 F. ROBERT STUDDERT  
26 Attorney for Defendants  
27 Tom Johnson and Johnson Oyster Company, Inc.

Date 1/10/97

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT C

Page 4 of 5

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FOR THE INTERVENORS:

LEGAL AID OF MARIN


By   
RICHARD MARCANTONIO  
Attorney for Intervenor

Date 1/10/97

ORDER

This Agreement signed by the parties is hereby made an order of this Court. It is the order of this court that all parties shall bear their own attorney's fees and costs.

Date: 18 Mardi, 1997

  
LYNN O'MALLEY TAYLOR  
Judge of the Superior Court

~~XXXXXXXXXXXX~~

Item Th-16a

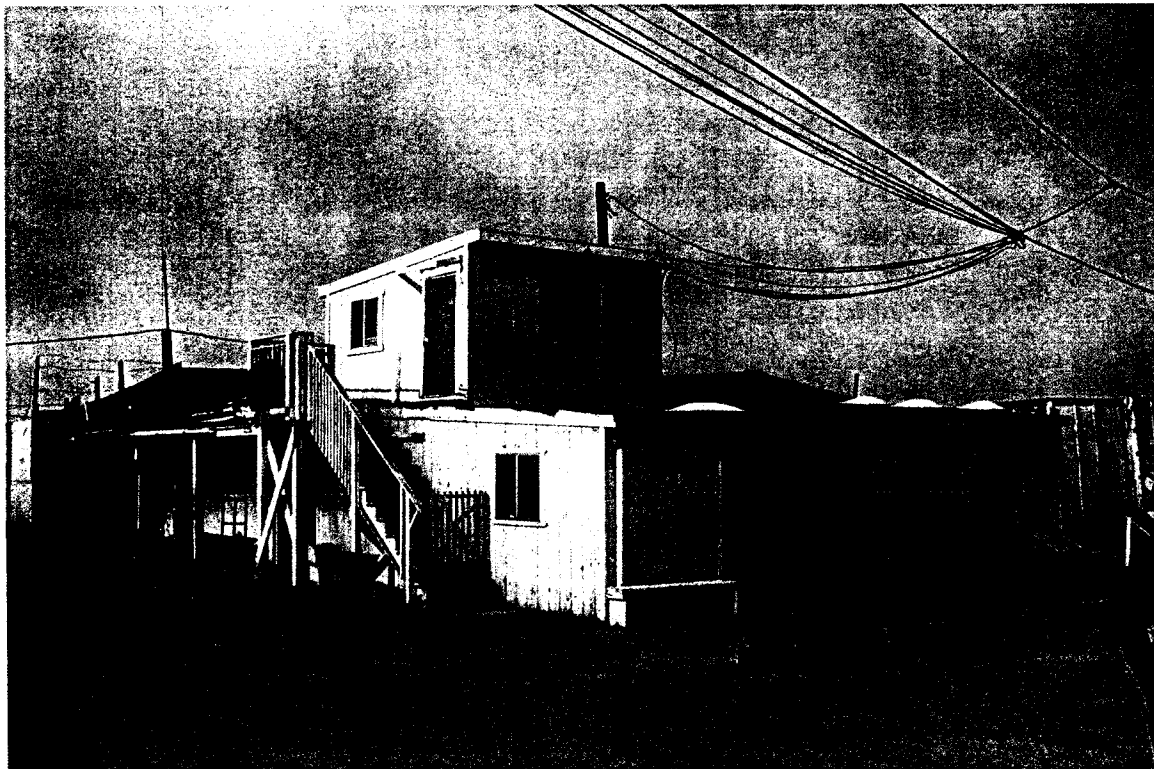
CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT C

Page 5 of 5



Unpermitted commercial buildings and storage sheds adjacent to the estuary



Retail building containing shucking room - modifications to building that pre-dates Proposition 20 (1972).

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT D

Page 1 of 5



Oyster cultivation equipment and refuse stored or discarded in the tidal zone, unpermitted storage shed, and dock in the foreground.



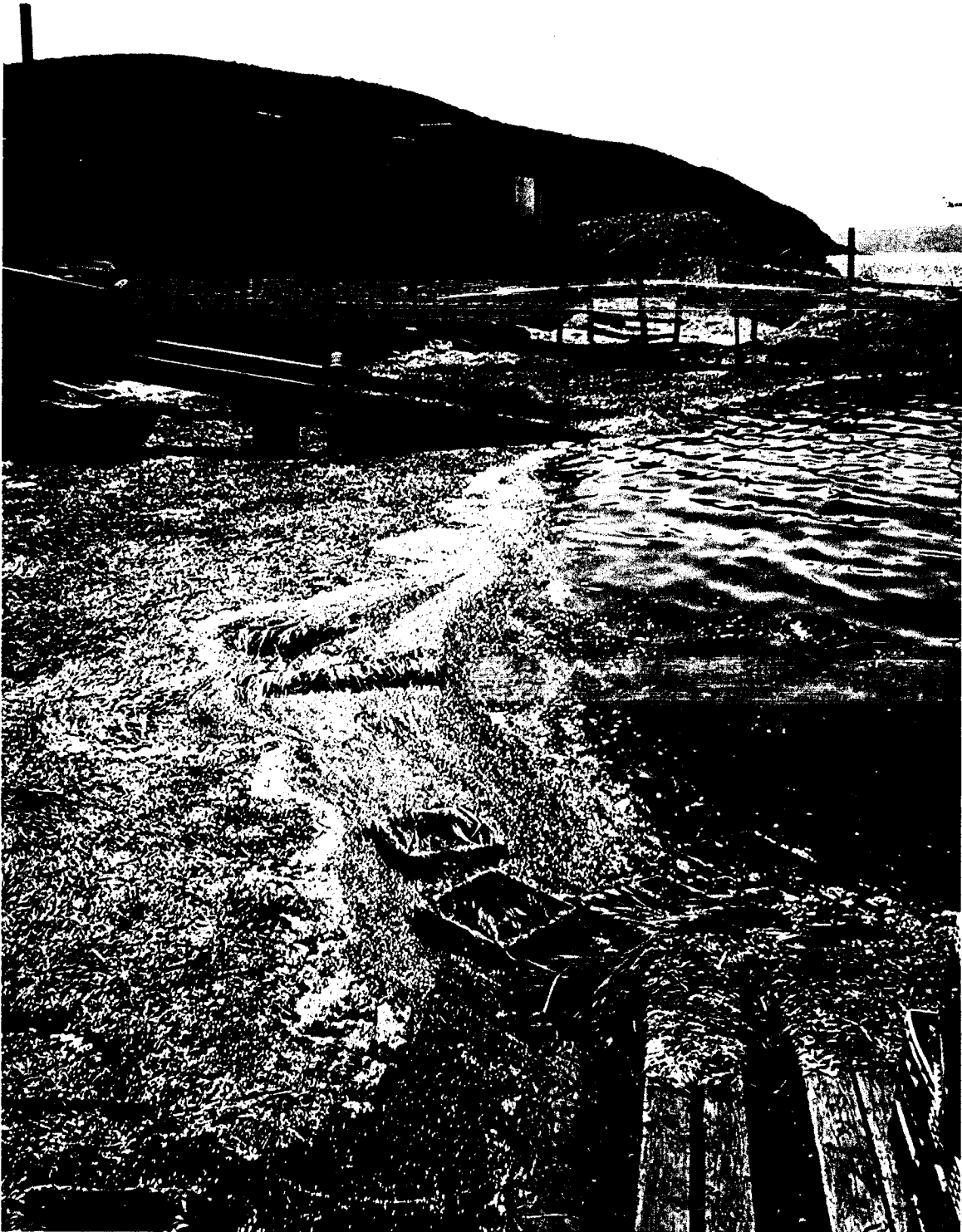
Oyster cultivation equipment and refuse stored or discarded in the tidal zone, and unpermitted commercial structures in the background.

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT D

Page 2 of 5



Oyster cultivation equipment and refuse stored or discarded in the tidal zone, which has caused the accumulation of seaweed and algae and stagnant water.

Item Th-16a

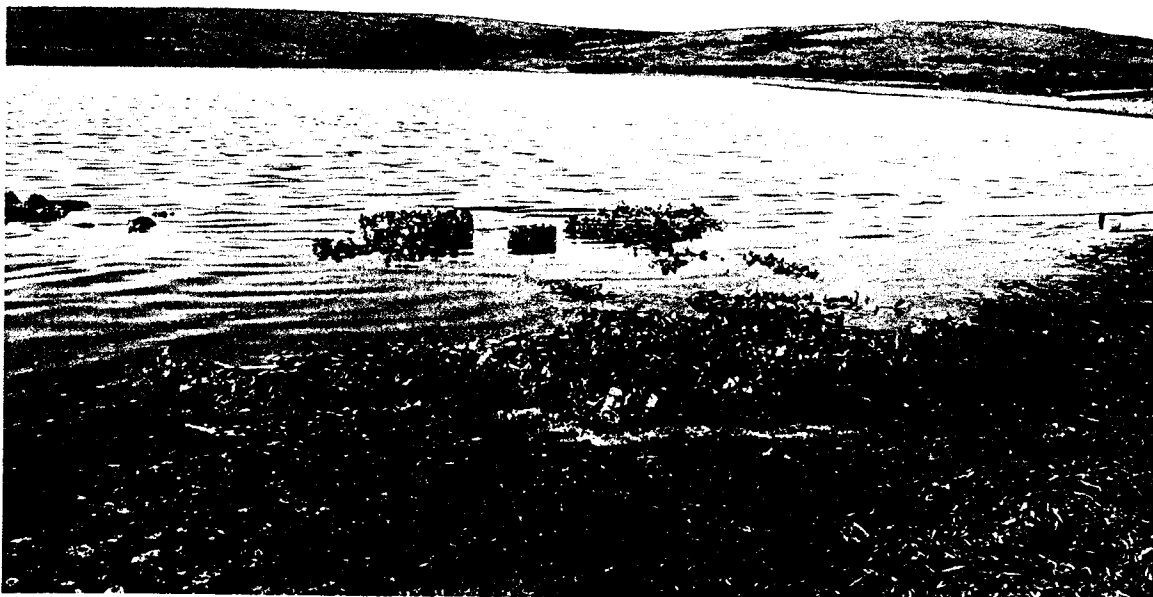
CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT D

Page 3 of 5



Oyster cultivation equipment and refuse stored or discarded under the water and in the tidal zone causing the accumulation of algae.



Accumulation of seaweed and stagnant water in the tidal zone in part caused by the oyster cultivation equipment and refuse stored or discarded in the tidal zone.

Item Th-16a

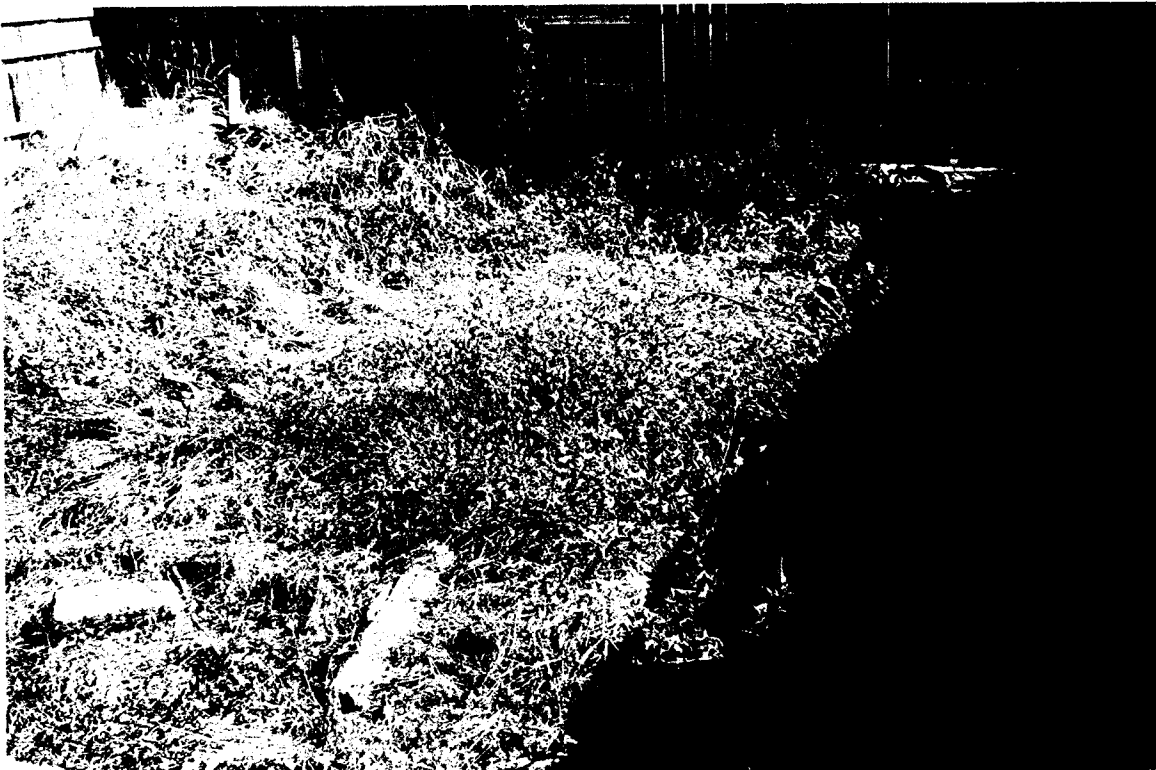
CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT D

Page 4 of 5



Oyster shell mound and oyster cultivation equipment stored along the waterfront.



Leach pit associated with the oyster processing facility that is tidally influenced.

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT D

Page 5 of 5



# BADDELEY, OLIKER & SARTORI

ATTORNEYS AT LAW

MICHAEL J. BADDELEY

ROBERT P. OLIKER

DUANE P. SARTORI

OF COUNSEL:

ARTHUR L. LAFRANCHI, P.C.

FREDERIC L. HIRSCHFIELD

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(707) 778-6313

SANTA ROSA OFFICE  
1421 GUERNEVILLE ROAD  
SUITE 104  
SANTA ROSA, CA 95403-4173  
(707) 545-1055

October 30, 2003

Alexis McBride  
County Counsel of Marin  
3501 Civic Center Dr., Ste. 303  
San Rafael, CA 94903-5222

Don Neubacher  
National Parks Service  
Pt. Reyes National Seashore  
Pt. Reyes, CA 94956

Nancy Cabe  
Chris Darnell  
California Coastal Commission  
45 Fremont, Ste. 2000  
San Francisco, CA 94105-2219

Tom More  
California Department of Fish & Game  
P.O. Box 1560  
Berkeley, CA 94923

Debbie Poiani  
Senior Code Enforcement Specialist  
Marin County Community Development  
3501 Civic Center Dr., Ste. 308  
San Rafael, CA 94903-4157

Re: Johnson's Oyster Company

Dear Representatives:

I have spoken to many of you by phone with regard to the status of Johnson's Oyster Company and their compliance with the directives from the various public agencies with regard to their operation at Drake's Estero. My purpose in writing at this time is to clarify the direction that Johnson's would like to go to bring the business into compliance with all applicable regulations and to satisfy the needs of both the public and the public agencies who are in charge of protecting this beautiful location.

Item Th-  
CCC-03-CD-12 (Johnson Oyster Co.)  
EXHIBIT E  
Page 1 of 4

Re: Johnson's Oyster Company

October 30, 2003

Page 2

As you all know, Johnson's Oyster Company has been around for a long time. Its historic use in Drake's Estero is well established. That historic use includes several residential dwellings, a dock and related facilities, a shed for the oyster seeding tanks, a commercial operation for the cleaning and processing of the oysters, a small retail outlet for the public, and various other structures and outbuildings. Due to various compliance issues, a Stipulated Judgment was entered which required certain matters to be handled in a specific timeframe. For reasons which are unimportant for purposes of this letter, certain deadlines were missed and several of the items which were supposed to be updated were never completed. Johnson's Oyster Company is now in receipt of a Notice of Intent to file a Cease and Desist Order from the California Coastal Commission as well as a notice from the County Counsel's Office of Marin.

Although our office is new to this particular issue, I personally have been a long time fan of the Johnson Oyster facility. I am an avid kayaker and regularly enjoy the waters of Drake's Estero. I personally believe that Johnson's Oyster Company adds a tremendous amount to the history and ambiance of Drake's Estero and is an asset to both the local and the greater community. It is with that spirit that I have approached the problems that now confront us.

Johnson's Oyster Company would like to remain a viable company in its present location. In order to do that, we are in the process of assembling an excellent team of consultants and engineers who will be able to advise Johnson's Oyster Company through this process. It is my expectation that we will be retaining Carol Whitmire, an independent Land Use Planner, to be our prime consultant with regard to processing all of the permits through the various governmental agencies. For those of you who do not already know Ms. Whitmire, she is an experienced and talented Land Use Planner who is well versed in the issues which now need to be addressed. We also anticipate that we will be retaining Steven Lafranchi, a well respected local engineer to help with the engineering aspects of the various applications. We have not yet designated our environmental consultant but we hope to have someone well versed in the National Environmental Policy Act within the next couple of weeks.

With regard to the overall plan, it is our intent at this time to dramatically scale back the operations at Johnson's Oyster Company. Let me address some of the components that will be part of our ultimate submittal.

It is my client's intent to essentially shut down the commercial processing component of the current facility. We intend to relocate that portion of the business off site either to an existing facility in Santa Rosa or possibly in Petaluma. Lease negotiations are currently underway at both facilities and we are hopeful to be executing letters of intent within the next few weeks.

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT E

Page 2 of 4

The effect of moving the commercial processing of the oysters off site will be twofold. First, it will eliminate essentially all of the commercial wastewater generated on the property. We know this is of particular concern to all of the agencies because the commercial wastewater is currently contained on site and there is not a permitted commercial waste disposal system currently in place. This change should eliminate the need for a commercial wastewater system. Second, this will allow for the removal of a significant portion of the structures which house the commercial operation. The final determination of which structures will be necessary for the scaled down business has not yet been made and cannot be made until we have had further design work done by our team.

The only operations that we intend to keep at the current location are a dock to load and unload oysters, the seeding tanks for seeding the oyster shells which will essentially be comprised of a small number of tanks enclosed in a single structure and some room to string and bay the seeded shells. Other than seeding the oysters, and placing them within bags to be put into Drake's Estero, no other formal processing of the oysters will take place on site.

We would like to continue to maintain a small retail establishment as Johnson's is clearly a landmark and thousands of people come to Drakes Estero every year to purchase oysters directly from the bay. A small retail establishment should not generate any commercial wastewater and should only have refrigeration capabilities to store oysters on site ready for retail sales. We are hopeful that even the rinsing of the oysters can be done on the barge when the oysters are retrieved. This would simply be a rinse with bay water. We have not yet made a determination as to whether or not the existing retail building can be salvaged so as to maintain the historic look of the building or whether it will have to be removed and a new structure constructed in its place. This as well is in the initial development stages.

With regard to the existing residential structures, we believe for the most part, that all fall outside the primary concerns of the various public agencies. There is a fully permitted septic system on site to handle all of the existing residential structures and therefore we assume that the structures will continue to be occupied by employees of Johnson's Oyster Company. To the extent that there is additional paperwork which needs to be processed through the California Coastal Commission with regard to the residential septic system, that documentation will be prepared by Ms. Whitmire.

We believe the net result of this re-structured business plan will be to eliminate upwards of 60% of the existing commercial usage at Johnson's Oyster Company, and move them off site. It is our belief, based on numerous discussions with our consultants, that a greatly scaled down Johnson's Oyster Company should be able to timely satisfy environmental and permitting concerns.

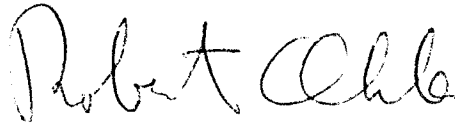
Re: Johnson's Oyster Company

October 30, 2003

Page 4

We would like to schedule a meeting with representatives of all interested agencies at the National Park's Headquarters within the next 30 days. That should give us sufficient time to more fully develop this new business model and to be able to meet with you and hopefully answer in detail all of your questions and concerns. I would welcome input from each of you on the proposal as outlined herein and whether you think we are on the right track. I look forward to hearing from all of you.

Sincerely,



ROBERT P. OLIKER

RPO/cas  
cc: Client

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT E

Page 4 of 4

# BADDELEY, OLIKER & SARTORI

ATTORNEYS AT LAW

MICHAEL J. BADDELEY

ROBERT P. OLIKER

DUANE P. SARTORI

OF COUNSEL:

ARTHUR L. LAFRANCHI, P.C.

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SANTA ROSA OFFICE  
1421 GUERNEVILLE ROAD  
SUITE 104  
SANTA ROSA, CA 95403-4173  
(707) 545-1055

November 21, 2003

Chris Darnell  
California Coastal Commission  
45 Fremont, Ste. 2000  
San Francisco, CA 94105-2219

Re: Johnson Oyster Company  
Statement of Defense

Dear Mr. Darnell:

Please consider this letter to be the Statement of Defense Form issued on behalf of Johnson Oyster Company with regard to the Intent to Commence Cease and Desist Order from the California Coastal Commission dated October 23, 2003. This Statement of Defense is preliminary and Johnson's reserves the right to further supplement its defense in this matter.

Johnson does not admit any of the allegations as set forth in the October 23, 2003 Intent to Commence Cease and Desist Order.

Johnson denies all of the allegations as set forth in the October 23, 2003 Intent to Commence Cease and Desist Order.

The paragraphs in the notice from the Coastal Commission are not numbered and therefore it is not possible for us to reference specific responses to specific paragraphs. However, in general, Johnson's has no knowledge of activities undertaken by the California Coastal Commission with regard to the in house analysis of the status of Johnson Oyster Company. Johnson's also has no personal knowledge of how the Coastal Commission is interpreting the law with regard to their facility.

Johnson's was of the belief that they were in compliance with existing law, or had extensions to do so. Johnson's was represented by their attorney Robert Stoddard who

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT F

Page 1 of 3

was in charge of assisting and advising them with regard to all aspects of compliance with applicable government regulations. Johnson's has spent hundreds of thousands of dollars in undertaking improvements to the facility to come into compliance with applicable regulations. To the extent there has been delay in securing compliance, much of that delay was caused by governmental entities who failed to timely issue permits. For example, it took almost three years for Johnson's to secure the necessary permits to complete the installation of their on site residential septic system. That delay was not caused by Johnson's.

Johnson's reserves the right to provide additional information and to supplement this Statement of Defense as additional information is learned. Johnson's had not had the opportunity to review the files of the relevant governmental agencies, particularly as it pertains to sanitation issues, to learn the exact reasons for the delays from that particular department. Unfortunately, the attorney for Johnson's has since passed away and much of the information with regard to how these matters was handled has passed away with him. Until a complete and full review has been completed, it is impossible to completely define the defense that may be presented on behalf of Johnson Oyster Company.

With regard to the submission of documents in support of the Statement of Defense, those documents are too voluminous to be included with this Statement of Defense document. Those documents include documents on file with as many as seven governmental agencies including the records and files of Johnson's attorney that have not yet been fully reviewed and indexed. There are also additional documents being prepared by consultants retained by Johnson's to address the issues which have been raised by the Coastal Commission. These issues were to be addressed in greater detail at the meeting scheduled for November 13, 2003 in which it was the understanding of Johnson's that numerous governmental agencies would have been in attendance. That meeting was unfortunately cancelled.

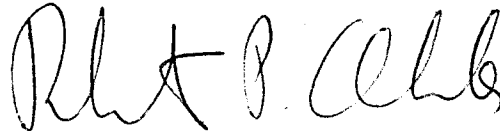
As an overriding issue with regard to this Statement of Defense, Johnson's reiterates recent comments which have been made both verbally and in writing to the Coastal Commission as well as other relevant governmental agencies. Specifically, Johnson's has every intent to comply with all applicable regulations, to the extent that has not already taken place, as quickly and as expeditiously as possible. Johnson's has retained consultants since the death of their attorney to advise them in this regard. Johnson's will provide updates and documentation to all applicable governmental agencies as quickly as that documentation is prepared. It is the intent of Johnson's to reach a consensus with the Coastal Commission, and all other governmental agencies to bring the property into compliance as quickly as possible.

Johnson's has been in existence at its current location for decades. This family operation has been in existence long before many of us were born, and certainly before some of the governmental agencies which now regulate them were even created. The

Chris Darnell, California Coastal Commission  
Re: Johnson Oyster Company-Statement of Defense  
November 21, 2003  
Page 3

Johnson Oyster Company is part of the history of Point Reyes Seashore. It is one of the few businesses which actively engages in the raising of oysters in our local waters which is a favored and supported activity under the California Fish and Game Code. It is our hope that in working with the Coastal Commission, and all applicable governmental agencies, that this piece of history can be preserved.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert P. Olikier". The signature is fluid and cursive, with the first name "Robert" being the most prominent part.

ROBERT P. OLIKER

RPO/cas

Item Th-16a

CCC-03-CD-12 (Johnson Oyster Co.)

EXHIBIT F

Page 3 of 3

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**COMMISSION CEASE AND DESIST ORDER NO. CCC-03-CD-12****1.0 REQUIRED-AUTHORIZED ACTIONS**

Pursuant to authority provided in Public Resources Code Section 30810, the California Coastal Commission hereby orders and authorizes Johnson Oyster Company, Inc. (JOC), doing business in Point Reyes National Seashore under a lease agreement with the National Park Service (NPS) to:

- (a) Cease and desist from maintaining unpermitted development at the site, and refrain from performing future development at the site not specifically authorized by a coastal development permit or a Consistency Certification.
- (b) Within 60 days of the issuance of this Cease and Desist Order (hereinafter "Order"), address the unpermitted development that the Executive Director determines has the potential to impair the water quality and biological health of the estuary, including but not limited to the storage of oyster cultivation equipment and disposal of refuse in the estuary and along the shore, drainage of wastewater onto the ground and into the estuary, and improper storage of used motor oil.
- (c) Within 90 days of the issuance of this Order, submit for the approval of the Executive Director, a plan prepared by a qualified land use planner and a certified engineer for the complete removal of all of the unpermitted development constructed or brought to the site after the Coastal Act of 1976,<sup>1</sup> remediation of coastal resource impacts, and restoration of the site. The development that must be addressed in the removal and restoration plan consists of several commercial buildings, modifications to buildings that pre-date the Coastal Act, three storage/refrigeration containers, an above-ground diesel tank with a concrete containment structure, and a mobile home and submerged oyster cultivation equipment and materials in the estuary.<sup>2</sup> The plan must also characterize any impacts to coastal resources from the unpermitted development onshore and in the estuary and provide for remediation of those impacts, including but not limited to restorative grading and soil remediation and the use of best management

<sup>1</sup> The buildings that pre-date the Coastal Act include the building that houses the shucking room and the retail counter, the two houses, and two of the four mobile homes. In 1984, the Commission authorized a third mobile home at the site through Consistency Certification No. CC-34-84.

<sup>2</sup> JOC may apply to the Commission for a coastal development permit to retain the unpermitted mobile home and oyster cultivation equipment in the estuary pursuant to Section 1.0(d).



practices to protect the water quality of the estuary.<sup>3</sup> Should the plan call for the removal of oyster cultivation equipment and materials in the estuary, the plan must provide measures to minimize negative impacts to coastal resources from the removal.

- (d) Within 60 days of the issuance of this Order, submit a complete application for a coastal development permit to authorize after-the-fact the unpermitted mobile home and any oyster cultivation equipment or materials in the estuary that were installed after the Coastal Act, and the recently constructed horse paddock.
- (e) Complete implementation of the removal and restoration plan within 90 days of its approval by the Executive Director.

## 2.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this Order is located at the northern terminus of Schooner Bay in Drakes Estero, Point Reyes National Seashore, Marin County, Assessor's Parcel No. 109-130-17 (hereinafter "Subject Property").

## 3.0 PERSONS SUBJECT TO THIS ORDER

The entity subject to this Order is the Johnson Oyster Company, Inc., its officers, employees, agents, and anyone acting in concert with the foregoing.

## 4.0 DESCRIPTION OF COASTAL ACT VIOLATION

JOC's Coastal Act violation is its failure to obtain a coastal development permit or a consistency certification to authorize: (1) construction of several commercial buildings, additions to buildings that pre-date Proposition 20, and a horse paddock; (2) placement of a mobile home, three metal refrigeration containers and an above-ground diesel fuel tank with a concrete containment structure; (3) drainage of waste water from the shucking room and retail building onto the ground and into the estuary; and (4) storage of oyster cultivation equipment and disposal of debris in the estuary and along the shore. The precise dates that the development was performed are unknown but all of the development subject to this order occurred after the date of the Coastal Act.

## 5.0 COMMISSION AUTHORITY TO ACT

The Commission is issuing this Order pursuant its authority under Section 30810 of the Public Resources Code.

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<sup>3</sup> Nothing in this Order shall be interpreted or construed to represent Commission approval of any new or existing development that may be proposed in the removal and restoration plan JOC is required to submit pursuant to this Order.

## 6.0 FINDINGS

This Order is being issued on the basis of the findings adopted by the Commission on December 11, 2003, as set forth in the attached document entitled Staff Report for Cease and Desist Order No. CCC-03-CD-12

## 7.0 EFFECTIVE DATE

This Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

## 8.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of this Order is required. If JOC fails to comply with the requirements of Section 1.0 of this Order, including any deadline contained therein, it will constitute a violation of this Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists.

## 9.0 EXTENSIONS OF DEADLINES

Notwithstanding Section 10.0, if JOC is unable to comply with the deadlines contained in Section 1.0 of this Order, JOC may request from the Executive Director in writing an extension of said deadlines. If the Executive Director determines that JOC has made a showing of good cause, he/she shall grant extensions of the deadlines. Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the subject deadline.

## 10.0 SITE ACCESS

JOC agrees to provide full access to the Subject Property at all reasonable times to Commission staff, and employees of the County of Marin and National Park Service for the purpose of inspecting the progress of work being carried in compliance with the terms of this Order.

## 11.0 APPEALS AND STAY RESOLUTION

Pursuant to Public Resources Code Section 30803(b), Respondents against whom this Order is issued may file a petition with the Superior Court for a stay of the Order.

## 12.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by JOC in carrying out activities authorized under this Order, nor shall the State of California be held as a party to any contract entered into by JOC or their agents in carrying out activities pursuant to this Order.

## 13.0 GOVERNING LAW

This Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

## 14.0 NO LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Issued this 11<sup>th</sup> day of December, 2003

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Peter M. Douglas, Executive Director  
California Coastal Commission

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Date

