

CALIFORNIA COASTAL COMMISSION

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# Th-16b

**Staff:** JG-SF  
**Staff Report:** November 21, 2003  
**Hearing Date:** December 11, 2003

## STAFF REPORT FOR CONSENT AGREEMENT AND CEASE AND DESIST ORDER

**CEASE AND DESIST ORDER:** CCC-03-CD-13

**RELATED VIOLATION FILES:** V-7-03-001

**PROPERTY LOCATION:** On the beach and in surf zone areas near the Casitas Pier, in the tidelands of the City of Carpinteria, Santa Barbara County (**Exhibit 1**)

**DESCRIPTION OF PROPERTY:** Leased tidelands owned by the City of Carpinteria

**PERSONS SUBJECT TO THIS ORDER:** Pacific Operators Offshore, LLC ("PacOps")

**VIOLATION DESCRIPTION:** Unpermitted placement of cement at the terminus of an existing power cable, to construct a cement "cap" over the cable terminus.

**SUBSTANTIVE FILE DOCUMENTS:** Cease and desist order file No. CCC-03-CD-13  
Background exhibits 1 through 18

**CEQA STATUS:** Exempt (CEQA Guidelines (CG) §§ 15060 (c)(3) and Categorical Exempt (CG §§ 15061(b)(2), 15037, 15038, and 15321)

## I. SUMMARY

Pacific Operators Offshore, LLC ("Respondent") has undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit, which constitutes a violation of Section 30600 of the Coastal Act. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

The unpermitted development consists of the placement of cement at the terminus of an existing power cable to construct a cement "cap" over the cable terminus. The subject development is located on the beach and in the surf zone near the Casitas Pier, in the tidelands of the City of Carpinteria ("subject property") near a harbor seal rookery. The land in which the cable terminus is located is under the jurisdiction of the City of Carpinteria and leased to the Respondent. The portion of the property below the mean high tide line is in the coastal permit jurisdiction of the Coastal Commission; the unpermitted cement cap, which is located directly in the surf zone, is within the Coastal Commission's area of original jurisdiction. The Commission therefore has jurisdiction both for issuing Coastal Development Permits and for enforcing the provisions of the Coastal Act in this area.

This unpermitted development is also in conflict with the terms and conditions of the previously issued **Emergency Permit E-03-001-G (Exhibit 6)**, which authorized repairs to an exposed high-voltage cable supplying electricity to offshore platforms. The repairs authorized by the Emergency Permit included replacing the lost sections of aluminum sleeve with thicker metal sleeves, and placing concrete into the space between the cable and the new sleeves (known as the "annulus"), but did not include construction of a cement cap. The permit also required removal of the materials and debris from the beach when the work was finished.

The Emergency Permit's Condition No. 3 states "*The applicant shall not deviate from the operations, timing, or sequence of operations specified in the application unless and until authorized by the Executive Director.*" Condition No. 5 states "*Work done pursuant to this emergency permit shall be limited to the measures needed to eliminate the immediate danger caused by the exposed electrical cable. Repair or maintenance work not needed to eliminate the immediate danger is not authorized by this emergency permit and may require additional review and approval through a regular coastal development permit.*" The Respondent installed the cement cap without seeking authorization from the Executive Director as required by Conditions 3 and 5 of Coastal Permit No. E-03-001-G.

Coastal Act Section 30820(b) provides for penalties to be imposed on anyone who violates the Coastal Act.

All parties wish to avoid the potential of a lengthy and expensive litigation process to resolve this violation. Accordingly, in order to resolve the violation administratively, the Respondent has agreed 1) to the issuance of the proposed Consent Agreement and Cease and Desist Order

("Consent Order"), which requires removal of the unpermitted cement cap,<sup>1</sup> in a manner that will minimize disturbance to coastal resources, including the nearby harbor seal rookery, 2) to comply with all other requirements of the Consent Order, and 3) to pay monetary penalties in the amount of \$40,000 to the Violation Remediation Fund.

The terms of the proposed Consent Order require a time certain removal of the unpermitted cement cap from the subject property, and, when complied with in full, will resolve the violation. Commission staff is recommending that pursuant to Coastal Act Section 30810, the Commission issue the Consent Order to resolve the violation. Although unpermitted development constituting a Coastal Act violation took place, Commission staff is very pleased that a solution to resolve this violation has been found and a proposed agreement has been reached. Staff thus recommends that the Commission approve and issue the Consent Agreement and Cease and Desist Order No. CCC-03-CD-13 ("Consent Order") to remove unpermitted development from the subject property.

## II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13185 of the Commission's regulations (Title 14, Division 5.5, California Code of Regulations (CCR)). The Cease and Desist Order hearing procedures are similar in most respects to the procedures that the Commission uses for permit and Local Coastal Program matters.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators 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, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their 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 Sections 13185 and 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 the Cease and Desist Order,

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<sup>1</sup> unless the Executive Director determines that the appropriate resolution of this Coastal Act violation would include partial retention/partial removal of the unpermitted cement cap, and the Coastal Commission approves a coastal permit or permit amendment authorizing such partial retention.

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 the order.

### III. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following motion:

#### 1. Motion

*I move that the Commission issue Consent Agreement and Cease and Desist Order No. CCC-03-CD-13 pursuant to the staff recommendation.*

#### 2. Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in issuance of the Consent Agreement and Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### 3. Resolution to Issue Cease and Desist Order

The Commission hereby issues Consent Agreement and Cease and Desist Order No. CCC-03-CD-13, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

### IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-03-CD-13

Staff recommends the Commission adopt the following findings of fact in support of its action.

#### A. History of Violation

##### 1. Emergency Permit History

On May 8, 1998, the Executive Director issued to the Respondent **Emergency Permit No. E-98-07-G (Exhibit 4)** for repair of 90 feet of the damaged and exposed 16,000-volt power cable at the subject site that supplies electricity to two offshore oil platforms. The Emergency Permit authorized replacement of sections of aluminum casing and pumping of cement into the space created by the replacement aluminum casing, known as the "annulus." The repair work was completed on May 15 and 16, 1998. On October 9, 1998, the Commission issued **Coastal Permit Waiver E-98-07-W (Exhibit 5)** to permanently authorize the repair work that was temporarily authorized by the Emergency Permit.

During the winter of 2000/2001, strong storm and wave action removed sand from the area, exposing approximately 50 feet of the cable and removing approximately 40 feet of the cable's metal sleeve. According to the Respondent, the loss of the sleeve increased the risk that the

electrical cable could short out and the possibility that the cable could loosen or break and damage the adjacent oil and gas pipelines owned by Venoco, Inc. Thus, in a letter from Mr. Clement Alberts representing the Respondent dated March 27, 2001, he requested another emergency coastal development permit to replace the lost metal sleeve. The Respondent subsequently withdrew its request on April 20, 2001, stating that higher levels of sand had returned to the beach and buried the cable, reducing the risk of cable failure, and making the immediate replacement of the lost metal sleeve unnecessary.

However, in January of 2003, the Respondent noted that the electrical cable had once again become exposed. In a letter dated January 9, 2003, Mr. Alberts explained that the metal sleeve and protective concrete coating had worn away along approximately 80 feet of cable, exposing several portions of bare electrical wire. Mr. Alberts asserted that if an object were to come into contact with those portions of the cable, the cable would short out and likely cause an explosion, possibly damage nearby pipelines, and possibly electrocute the harbor seals inhabiting the nearby seal colony. The Respondent thus once again requested from the Executive Director an emergency permit to replace lost sections of the metal sleeve with thicker metal sleeves and replace the concrete coating within the metal sleeves.

In response, on January 28, 2003, the Coastal Commission issued **Emergency Permit No. E-03-001-G (Exhibit 6)**, authorizing repair of the metal sleeves and concrete casing of the exposed 80-foot section of the power cable. The emergency permit authorized the pumping of cement only into the space between the 12-inch sleeve and the five-inch plastic cover. The Respondent did not request and the emergency permit did not grant authorization to pump cement anywhere directly on the beach, or at the terminus of the cable to create a cement "cap." In addition, Condition No. 3 of the emergency permit specifically required that the applicant shall not deviate from the operations, timing or sequence of operations specified in the application unless and until authorized by the Executive Director. Condition No. 5 further stated that work done pursuant to the emergency permit shall be limited to the measures needed to eliminate the immediate danger caused by the exposed electrical cable, and that repair or maintenance work not needed to eliminate the immediate danger is not authorized by the emergency permit. The work was performed on January 28-30, 2003, over a period of three days. During this time, in addition to the work authorized by the emergency permit, the Respondent also performed unpermitted development in the form of placement of cement on the beach at the terminus of the cable, in violation of Conditions 3 and 5 of **Emergency Permit No. E-03-001-G**, and, thus, of the Coastal Act.

The Respondent's follow-up coastal permit application sought to make permanent the repairs temporarily authorized by **Emergency Permit No. E-03-001-G**. That work included: staging equipment and supplies on a paved parking lot above the beach, moving equipment onto the beach, removing loose or damaged sections of the cable coverings, replacing the metal sleeves, pumping cement into the annulus between the cable and the new sleeves, and removal of materials and debris from the beach upon completion of work. The project description did not include a request to place any cement on the beach. Commission staff requested that the follow-up application be amended to include a request to remove the cement, as it did not appear that it was approvable development, but the Respondent did not do so. Commission staff, therefore,

decided to deal separately with the unpermitted cement cap, and went forward to the Commission with the follow-up coastal permit application, recommending approval of the proposal to make permanent the repairs temporarily approved by **Emergency Permit No. E-03-001-G**. The Respondent's follow-up coastal permit application, **No. E-03-002**, was heard and approved by the Commission on September 11, 2003 (**Exhibit 7**).

## 2. Attempts to Resolve Coastal Act Violation

Commission staff first learned of the alleged violation on the subject property shortly after the work authorized by the emergency permit was completed. Commission staff learned that cement had been pumped into a large hole that had been dug into the sand on the beach. The cement covered not just the end of the pipe but also several sections of the new sleeve. The placement of cement on the beach and around the terminus of the cable was unpermitted development not authorized by the emergency permit.

On April 10, 2003 Commission staff sent to the Respondent a "Notice of Violation" letter regarding the unpermitted development on the subject property (**Exhibit 8**). In this letter, Commission staff pointed out that the placement of cement on the beach was unpermitted development, and that to resolve the violation, the then-pending follow-up coastal permit application should be amended to include a request to either retain or remove the unpermitted cement.

Over the course of the next few months, a number of letters and emails were sent from the Respondent to Commission staff (**Exhibits 10, 12, 14, and 15**), and a number of letters of response were sent from Commission staff to the Respondent (**Exhibits 9 and 11**), concerning the unpermitted development. In various correspondence, Pacific Operators Offshore, LLC ("PacOps") made assertions regarding the construction of the cement cap, and why a coastal permit should not be required. For example, Mr. Alberts sent an email dated April 16, 2003 to Commission staff in which PacOps asserted that the construction of the cement cap constitutes repair and maintenance of an existing structure, and, thus, does not require a coastal permit.

In a letter of response to the Respondent dated April 17, 2003 (**Exhibit 9**), Commission staff pointed out that even if the construction of the cement cap could be considered to be "repair and maintenance" of an existing cement structure, it nevertheless requires a coastal development permit, pursuant to Section 13252(a)(3) of the Commission's *Administrative Regulations*. This section of the regulations states that a coastal permit is required for any repair and maintenance to structures located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters that include the placement of solid materials and/or the presence, whether temporary or permanent, or mechanized equipment or construction materials. Development such as this—the placement of cement directly on the beach—clearly falls under this section and requires a permit.

The April 10<sup>th</sup> and April 17<sup>th</sup> letters from Commission staff stated that the construction of an unengineered cement cap in the surf zone is an activity that appears to be inconsistent with Coastal Act Section 30233, which allows filling of open coastal waters only for certain limited

uses, and only where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. These letters noted that it appears that the cement cap was not properly engineered (if at all) and, in addition to being unpermitted and inconsistent with the Coastal Act, may have the potential to cause a premature failure of the cable; thus, staff could not conclude that there is no feasible less environmentally damaging alternative, and would likely not conclude that this activity is consistent with the Coastal Act. Staff recommended that the then pending **Coastal Permit Application E-03-002** (follow-up CDP application required by **Emergency Permit No. E-03-001-G**) be amended to include removal of the cement cap, and suggested that the permit application could also be amended to include a new proposal for a properly engineered method of stabilizing the power cable that could be demonstrated to be the least environmentally damaging alternative that is consistent with Coastal Act policies.

Despite Commission staff's reiteration that a coastal permit is required for the unpermitted cement cap to remain in place, and recommendation that the best way to resolve the outstanding Coastal Act violation would be to apply for removal of the cement, the Respondent continued to send additional correspondence expressing the Respondent's desire that the cement cap remain in place.

In a letter dated May 22, 2003 (**Exhibit 11**), Commission staff further stated that it is staff's conclusion, after discussions with the Commission's staff engineer and Water Quality Unit personnel, that the cement was poured directly onto the beach, without being properly cured, engineered, or installed. Wet cement is known to have adverse effects on organisms, as uncured cement has a significantly higher PH (more basic) than sea water, making the surface of uncured concrete toxic to invertebrate organisms for as long as 12 months. Based on conversations with City of Carpinteria staff, Commission staff further noted that the cement is already being broken up by surf and wave action, and does not appear to be providing viable protection for the cable line.

Staff gave the Respondent deadlines of May 30, 2003 to indicate how it proposed to resolve the outstanding Coastal Act violation and of June 6, 2003 for submittal of an amended project description of **CDP Application No. E-03-002** to include removal of the cap. The Respondent did not meet either the May 30<sup>th</sup> or June 6<sup>th</sup> deadlines. Instead, Mr. Alberts sent a response dated June 13, 2003 (**Exhibit 12**), in which he disagreed with Commission staff's assertion that the cement cap may have adverse environmental impacts. He also disagreed with staff's observation that the cement cap is breaking up as result of wave action and that the cap is not providing adequate protection for the cable. He further stated that any removal of the cap would greatly destabilize the cable terminus and likely result in inherently dangerous circumstances. As noted above, the Commission staff engineer and Water Quality staff analyst disagreed with this position.

The City of Carpinteria shares the Commission's concerns over the unpermitted cement cap. In a letter to Commission staff dated July 1, 2003 (**Exhibit 13**), the Director of Carpinteria's Parks and Recreation Department stated that City staff has visited the site of the unpermitted work. He pointed out that the cable is on public tidal and submerged property under the jurisdiction of the

City of Carpinteria, who is the lessor of the property. He stated that the upper portion of the repair installation appears to be a free-form cement pour, that the City has not been provided any evidence that this free-form cement pour over the electrical cable provides any benefit to the cable, and that during a site visit in the spring of this year, the cement appeared to be undermined and providing no benefit to the cable. The City expressed concern that the free-form cement pour may have adverse environmental impacts and indicated that it is the City's preference that the cement be removed as soon as practical.

On July 25, 2003 Steve Kirby, representing the Respondent, sent Commission staff an email (**Exhibit 14**), raising a new argument that had not been raised by the Respondent in any of its previous discussions or correspondence with Commission staff. In his correspondence, Mr. Kirby asserted that the placement of the cement cap is exempt from coastal permit requirements based on the provisions of Coastal Act Section 30610(g). This Coastal Act section exempts from coastal permit requirements replacement of certain structures destroyed by natural disaster, if a number of criteria are met. By letter dated August 19, 2003 (**Exhibit 15**), the Respondent submitted various materials concerning Mr. Kirby's assertion regarding Section 30610(g) of the Coastal Act. Staff examined all the submitted information and materials, and has determined that the cement cap is not exempt pursuant to Coastal Act Section 30610(g).

Section 30610 of the Coastal Act exempts certain types of development from coastal permit requirements. Subsection (g) exempts the *replacement* of structures destroyed by disaster, so long as the replacement structure meets certain criteria. This section does not apply to the cement structure for two reasons: First, the free-form cement pumped onto the beach and into the water is not the same "structure" as the one it is purported to replace. What existed previously, as shown in the plans PacOps submitted from 1968, is an engineered structure with piers that supported the cable from below. The plans also contain a dotted line that is drawn above the cable support structure that the Respondent claims represents a cement cap, although no photographic evidence of any such cap actually having been constructed has been provided. The cable support structure depicted in the 1968 plan is thus very different from the unstructured pile of cement that was pumped on top of the cable at its terminus on the sandy beach. Thus, the cement cap constitutes new development.

Second, the slow, continuous deterioration over time of the cable support structure depicted in the 1968 plan, caused by the continuing and long-term erosive effects of saltwater, sand, wind, waves, currents, etc., is not a *disaster*, as that term is used in Section 30610 of the Coastal Act. The Commission has, in the past, recognized an exemption from coastal permit requirements for the replacement of certain structures after concluding that a discrete, catastrophic event caused their destruction. Such an event might be a fire, an earthquake, a flood, or a sudden landslide. In contrast, slow, continuous erosion would be expected to occur at this location. The "wave and tidal forces" eroded the cable support structure slowly over a long period of time, as opposed to a discrete catastrophic or unexpected event. The tidal effects were predictable and, moreover, during the extended period of time in which deterioration of the support structure was occurring, the Respondent could have taken appropriate repair and maintenance measures to prevent the damage. For these reasons, the forces that caused the deterioration in the condition of the cable support structure were not "beyond the control of the owner" for purposes of section



30610(g)(2)(A) and thus do not qualify as a "disaster," nor do they qualify for an exemption from the permitting requirements.

### 3. **Notice of Intent for Cease and Desist Order**

On September 10, 2003, the Commission's enforcement unit sent a Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) to the Respondent (**Exhibit 16**). The NOI stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's November, 2003 hearing agenda, and provided the Respondent with the opportunity to respond to allegations in the NOI with a Statement of Defense form.

In several telephone conversations with staff in October and November of 2003, the Respondent indicated its interest in settling the matter, and willingness to remove all of the unpermitted development on the subject property between July 1 and July 15, 2004, unless the Commission has issued a coastal permit or permit amendment prior to July 1, 2004 authorizing partial retention of the unpermitted development (cement cap). The Respondent signed and returned the attached Waiver of Defenses form to indicate its intent to cooperatively resolve the matter (**Exhibit 17**). Staff received the signed Waiver of Defenses form on November 25, 2003.

#### **B. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist Order, consists of the placement of cement at the terminus of an existing 16,000-volt power cable for the purpose of constructing a cement "cap" over the cable terminus.

#### **C. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal Act, which states, in relevant part:

*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 first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*

The development activity that has occurred on the subject property (unpermitted placement of cement at the terminus of an existing power cable to construct a cement "cap" over the cable terminus) meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code § 30600. Therefore, the Commission may issue a Cease and Desist Order under Public Resources Code § 30810. Pursuant to Section 30810(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..."

**D. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a consent agreement and cease and desist order to compel the removal of the unpermitted development is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**E. Consent Agreement: Settlement of Penalties**

The Coastal Act provides for a variety of remedies, including penalties, for violations of the Coastal Act and permits issued thereunder. In particular, Section 30820(a) and (b) and Section 30822 provide for such penalties.

As noted above, the Respondent has clearly stated its willingness to completely resolve the violation administratively and through a settlement process. To that end, the Respondent has stated its intent to remove the unpermitted cement cap. Additionally, in light of the intent of the parties to resolve this matter in a timely fashion and through settlement, the Respondent has agreed to pay a monetary settlement in the amount of \$40,000 (See Section 10.1 of the attached Consent Order (**Exhibit 18**)).

**F. Waiver of Defenses**

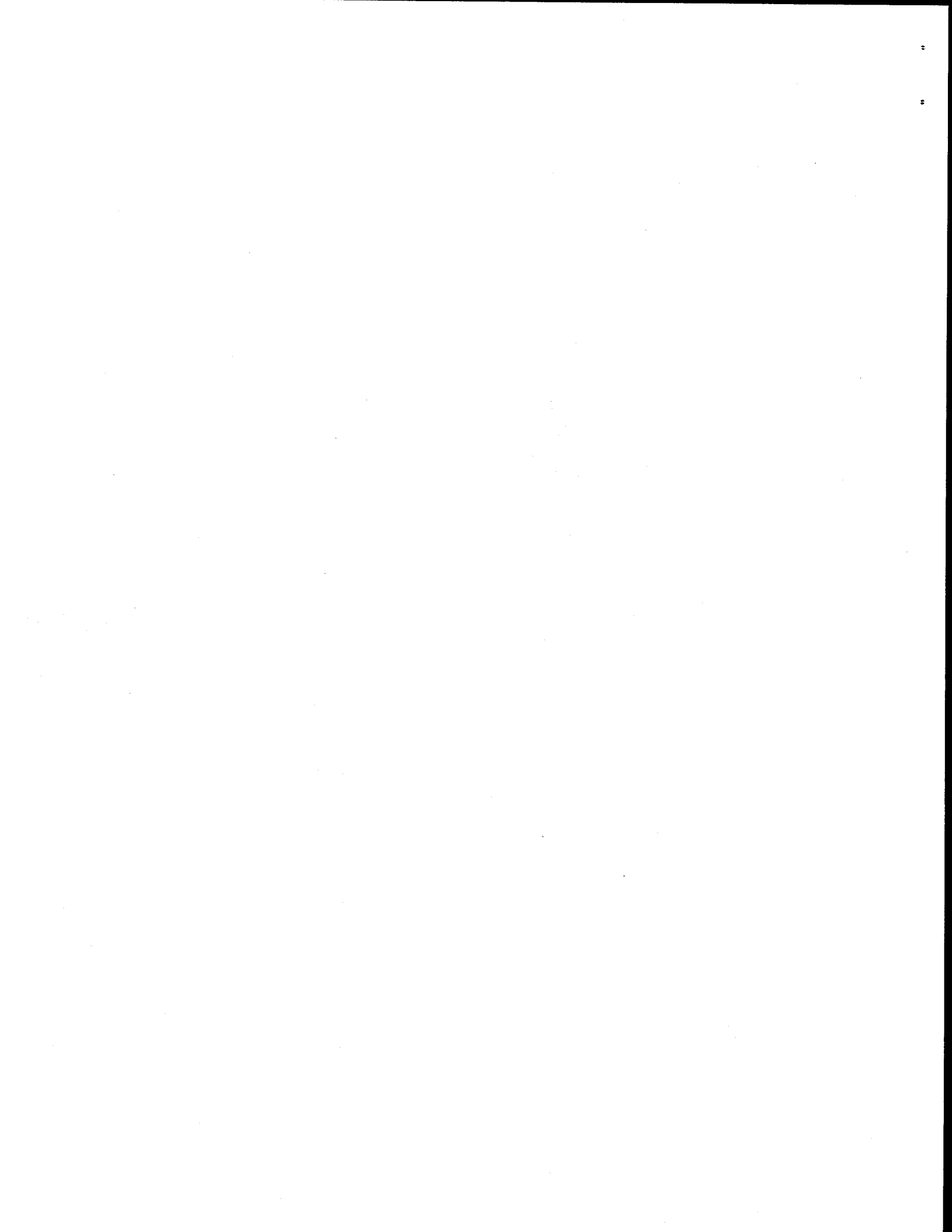
In recognition of the value of resolving this matter in a timely manner and for the purposes of agreeing to the issuance and enforcement of the Consent Order, the Respondent has agreed not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183.

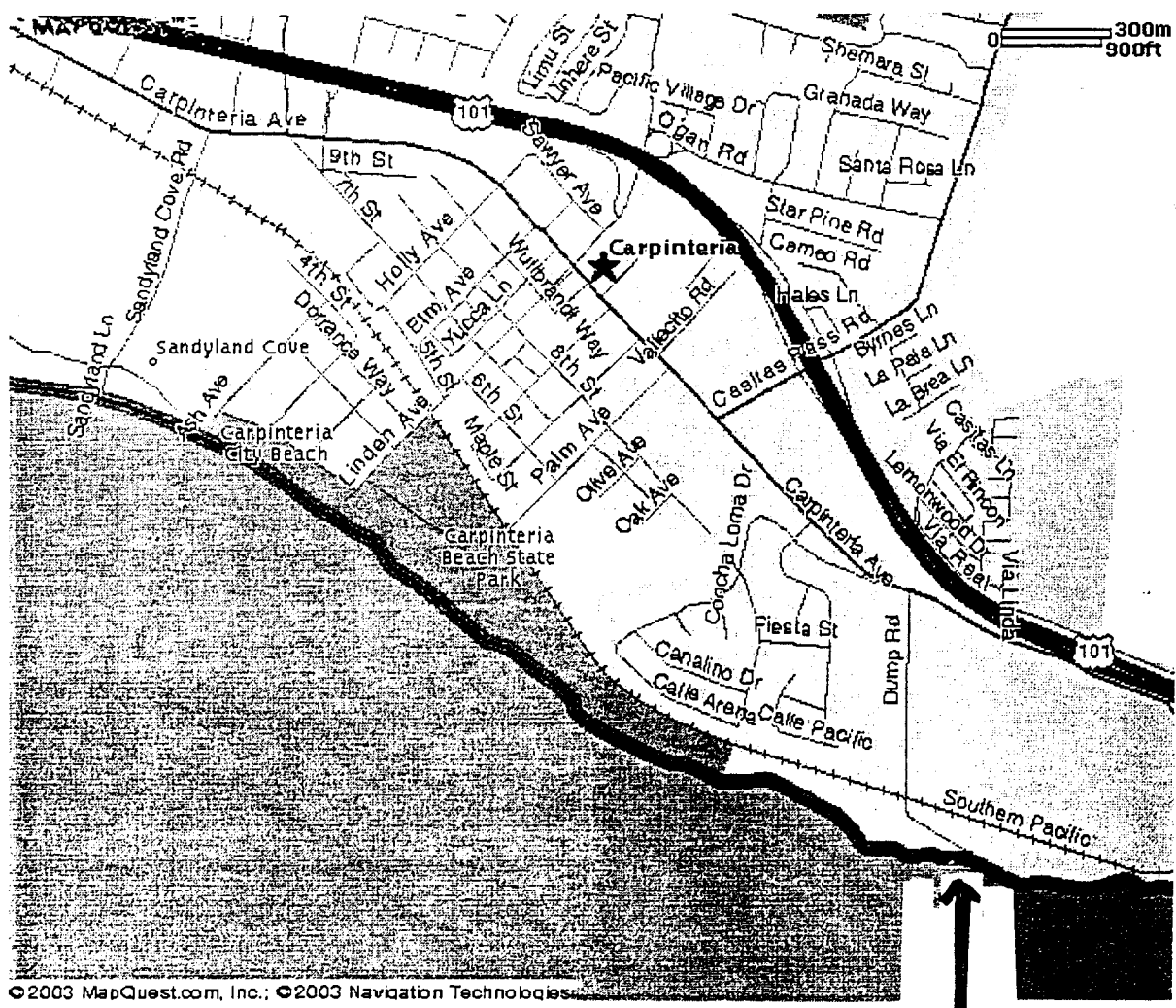
Staff recommends that the Commission issue the Consent Agreement and Cease and Desist Order that is attached as **Exhibit 18**.

**Exhibits**

1. Site Location
2. Site photograph
3. Site photograph
4. Emergency Permit No. E-98-07-G
5. Coastal Permit No. E-98-07-W
6. Emergency Permit No. E-03-001-G
7. Coastal Permit No. E-03-002
8. Notice of Violation letter dated April 10, 2003 from Commission staff to Respondent
9. Letter dated April 17, 2003 from Commission staff to Respondent

10. Letter dated April 25, 2003 from Respondent to Commission staff
11. Letter dated May 22, 2003 from Commission staff to Respondent
12. Letter dated June 13, 2003 from Respondent to Commission staff
13. Letter dated July 1, 2003 from City of Carpinteria to Commission staff
14. Email dated July 25, 2003 from Respondent to Commission staff
15. Letter dated August 19, 2003 from Respondent to Commission staff
16. Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) from Commission staff to Respondent
17. Waiver of Defenses Form submitted by Respondent to the Commission dated November 25, 2003
18. Consent Agreement and Cease and Desist Order CCC-03-CD-13





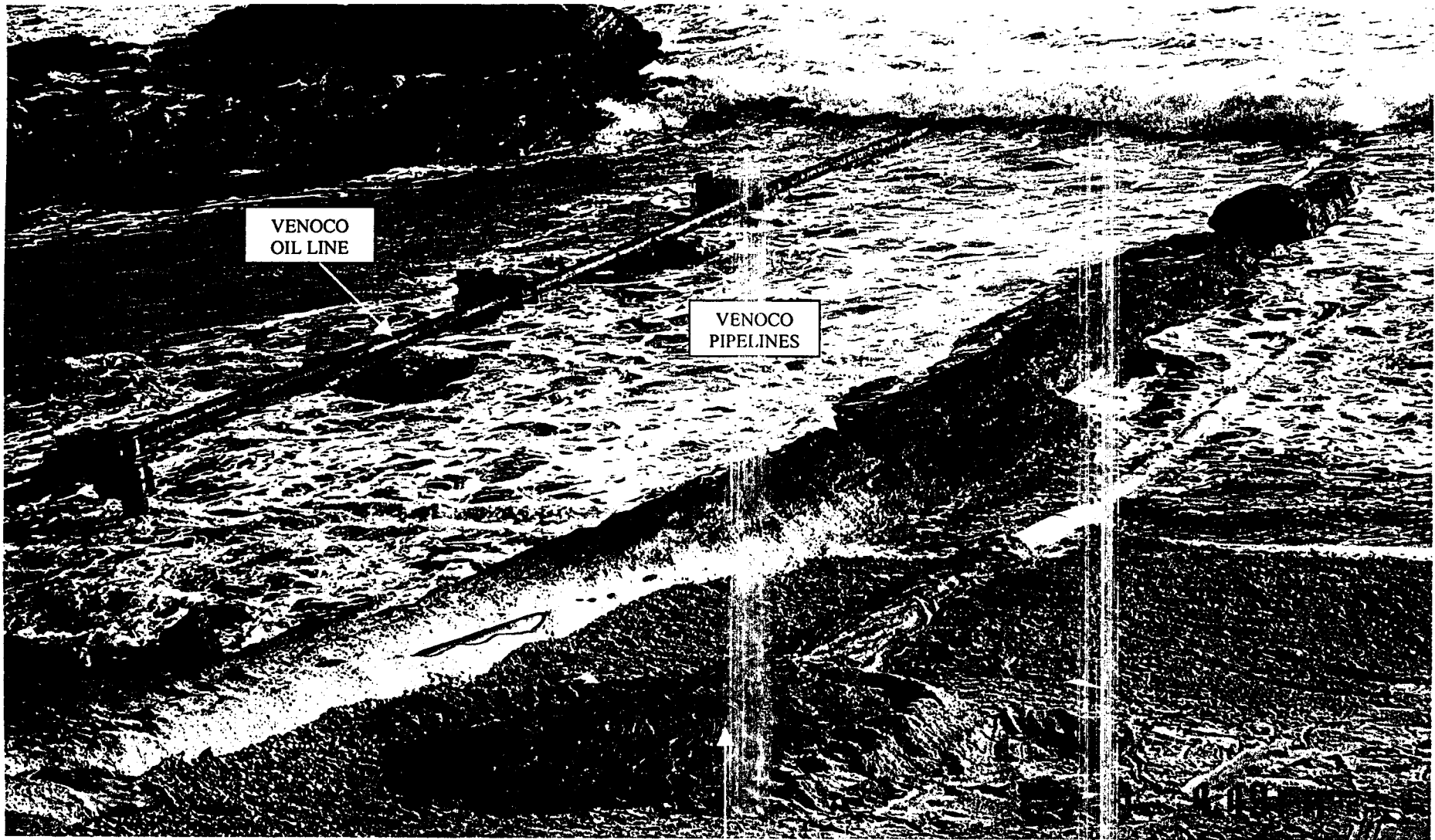
PAC OPS CABLE

Item: Site Location

CCC-03-CD-13 (PacOps)

EXHIBIT 1

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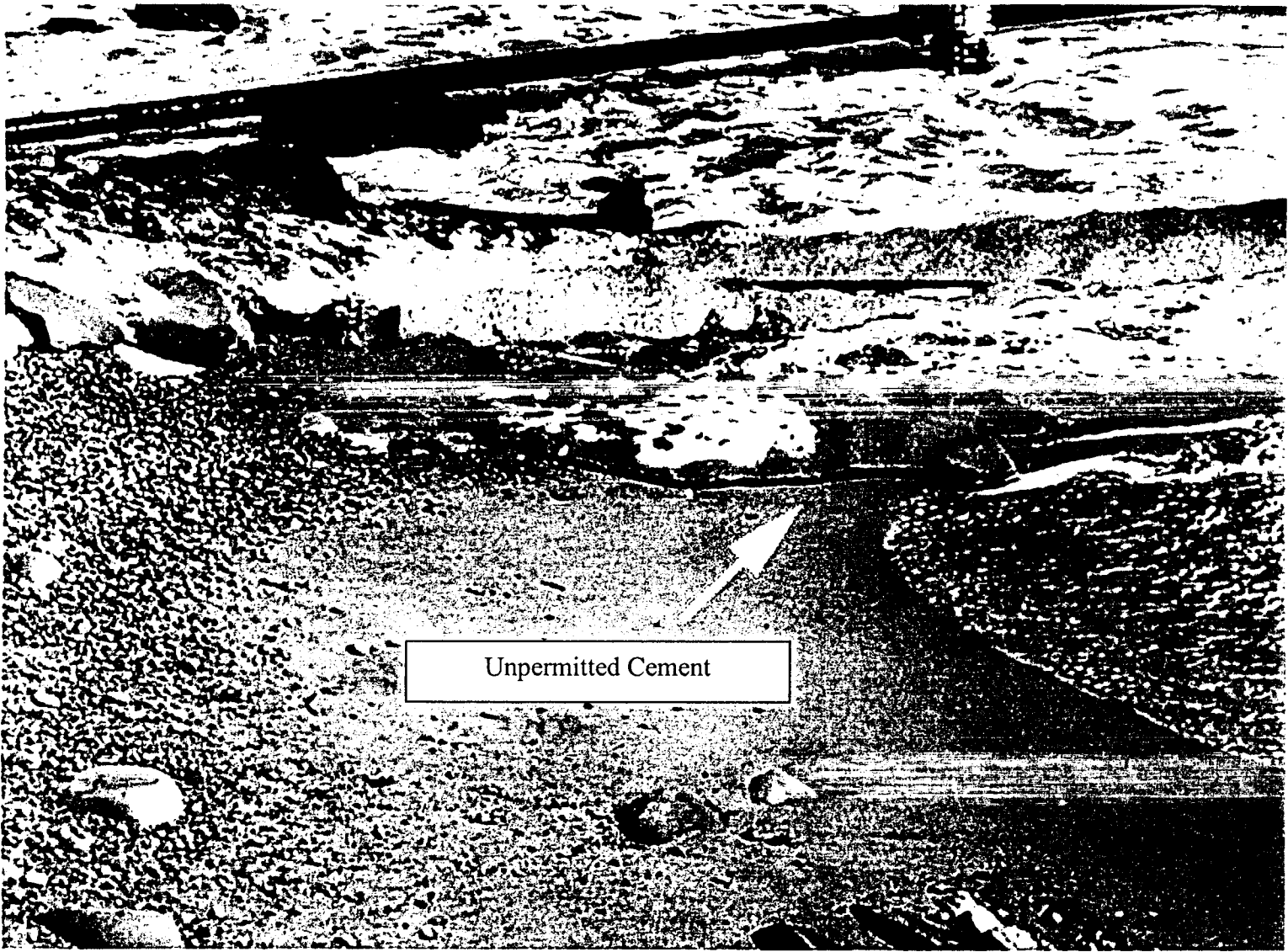


VENOCO  
OIL LINE

VENOCO  
PIPELINES

PAC OPS Cable  
Wet Cement Immediately Following  
Installation – January 30, 2003

Item: Site Photograph  
CCC-03-CD-13 (PacOps)  
EXHIBIT 2 Page 1 of 1



Unpermitted Cement

Unpermitted Cement Showing Effects of  
Tidal Action – April 3, 2003

Item: Site Photograph

CCC-03-CD-13 (PacOps)

EXHIBIT 3

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## CALIFORNIA COASTAL COMMISSION

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



## EMERGENCY PERMIT

**Applicant:** Pacific Operators Offshore

May 8, 1998

**Permit No.** E-98-07-G

**Location of Emergency Work:** On beach and in surf zone areas near the Casitas Pier, offshore the City of Carpinteria, Santa Barbara County.

**Work Proposed:** To repair the damaged portion (approximately 90 feet) of the protective sleeve that covers a 16,000-volt electric cable, Pacific Operators Offshore will (1) temporarily shut off power to the cable, (2) uncover the damaged portion using hand tools, (3) clip loose or dangling ends of the protective wires which wrap the cable, (4) install a 5-inch outer diameter split plastic sleeve around the exposed portion of the cable and secure it with plastic ties, (5) place a 12-inch split aluminum casing around the newly-installed plastic sleeve, installed in 10-foot sections, and sealed around the shore and seaward ends of the existing 8-inch sleeve, and (6) pump a cement grout mix inside the annulus between the 12-inch sleeve and the 5-inch plastic cover.

Pacific Operators Offshore will then place up to two grout bags under the cable for support as follows: (1) Temporarily shut off power to the cable, (2) clear any sand from under the cable where the bags are to be placed, and (3) place the bags and fill them with a concrete slurry mix.

Work will be conducted each day during the minus tide period, which affords a window of up to four hours. All work will be completed in two to three days, commencing May 13, 1998. All work will be staged and conducted according to the direction of Mr. Peter Howorth, a marine mammal consultant, who will orient the work crews and will remain on-site at all times while work is being conducted.

This emergency permit constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of an exposed and damaged power cable requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. *14 Cal. Admin. Code Section 13009.* The Executive Director hereby finds that:

- (a) There exists an imminent threat of emergency which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless extended pursuant to the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed as time allowed; and
- (c) As conditioned, the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

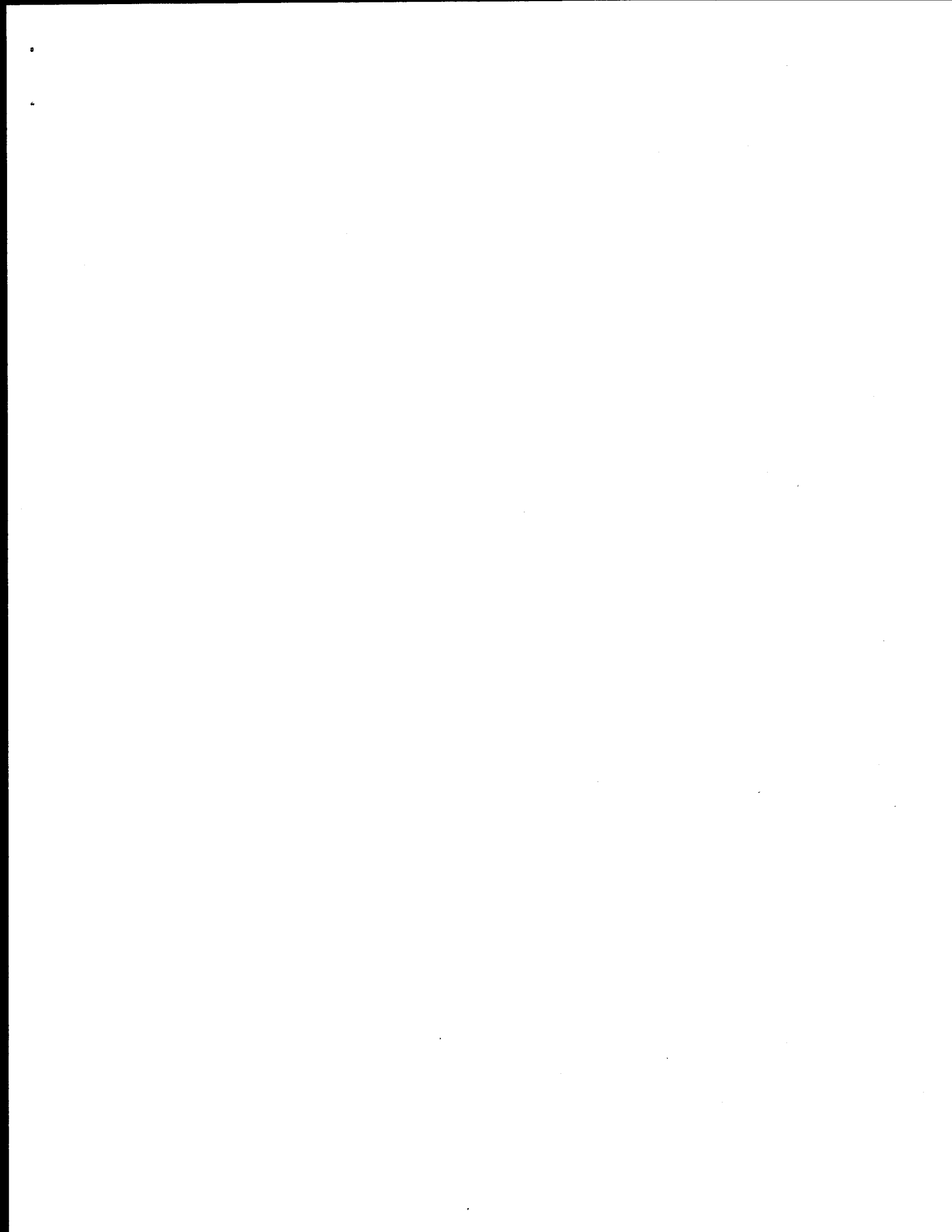
Item: Emergency Permit No. E-98-07-G

CCC-03-CD-13 (PacOps)

EXHIBIT 4

Page 1 of 3





The work is hereby approved, subject to the following conditions.

## CONDITIONS OF APPROVAL

### *General Conditions*

1. This permit shall not become effective unless and until the enclosed Emergency Permit Acceptance Form is signed by PACIFIC OPERATORS OFFSHORE and returned to the Executive Director of the California Coastal Commission (hereinafter, "Executive Director").
2. This emergency permit authorizes only those project operations and locations specifically described in (1) the letter from John Kramer, Pacific Operators Offshore (POO), to Moira McEnespy, CCC, dated and received April 22, 1998; (2) the Wildlife Protection Plan from Peter Howorth, Marine Mammal Consulting Group, to Moira McEnespy, CCC, dated and received April 27, 1998; (3) the letter from Peter Howorth, Marine Mammal Consulting Group, to Irma Lagomarsino, National Marine Fisheries Service, dated April 21, 1998, and received April 23, 1998; (4) the letter from John Kramer, POO, to Moira McEnespy, CCC, dated April 27, 1998, and received April 28, 1998; and (5) the letter from John Kramer, POO, to Moira McEnespy, CCC, dated April 30, 1998, and received May 1, 1998. PACIFIC OPERATORS OFFSHORE shall not deviate from the operations, timing or sequence of operations or locations specified in the referenced documentation unless and until authorized in writing by the Executive Director.
3. Within 30 days of issuance of this permit, PACIFIC OPERATORS OFFSHORE shall submit an application for a regular coastal development permit (CDP) to the California Coastal Commission for all work authorized by this emergency permit (No. E-98-07-G).
4. In addition to any immunities provided for by law, in exercising this permit, PACIFIC OPERATORS OFFSHORE agrees to hold harmless and indemnify the California Coastal Commission, its officers, employees, agents, successors and assigns from any claims, demands, costs, expenses and liabilities for any damage to public or private property or personnel injury that may result directly or indirectly from the project.

### *Site/Resource Disturbance*

5. Site disturbance necessary to complete the cable repair activities shall be minimized to the maximum extent feasible.
6. All debris generated through sleeve destruction or conducting repair activities (e.g., clipped ends of wires, escaped pieces of concrete) shall be collected and properly disposed of.
7. All work shall be conducted according to the direction of Mr. Peter Howorth, marine mammal consultant, who shall remain on-site during all phases of work.

Item: Emergency Permit No. E-98-07-G

CCC-03-CD-13 (PacOps)


EXHIBIT 4

Page 2 of 3

Very Truly Yours,

PETER M. DOUGLAS  
Executive Director

By:

  
Susan Hansch

Title: Deputy Director

**CALIFORNIA COASTAL COMMISSION**

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

**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER – DE MINIMIS**

**DATE:** October 9, 1998 **PERMIT:** E-98-07-W

**TO:** Coastal Commission and Interested Parties

**SUBJECT:** Waiver of Coastal Development Permit Requirements

Based on the plans and information submitted by the applicant for the development described below, the Executive Director of the Coastal Commission hereby waives the requirements for a Coastal Development Permit (CDP), pursuant to Section 30624.7 of the California Coastal Act.

**Applicant:** Pacific Operators Offshore (POO)

**Project Location:** Located on beach and surf zone near the Casitas pier, offshore from the City of Carpinteria, Santa Barbara County (Exhibits A and B).

**Background:** On May 8, 1998, the Coastal Commission's Executive Director issued to POO emergency permit E-98-07-G to repair a 68' portion of damaged steel protective sleeve for a 16,000 volt power cable, which serves Platforms Hogan and Houchin. The sleeve was damaged by storm action, resulting in potential exposure to wildlife and the public. The repair work was completed on May 15<sup>th</sup> and 16<sup>th</sup>, 1998.

Condition 3 of emergency permit E-98-07-G required POO to submit an application for a regular coastal development permit as a follow-up to the emergency permit. CDP application E-98-07 constitutes POO's required regular permit application.

**Project Description:** To repair the power cable, POO proposes to temporarily shut off power to the cable; uncover the damaged portion using hand tools; and clip loose ends of the protective wires which wrap around the cable. A 5" split plastic sleeve will be placed around the exposed portion of the cable and secured with plastic ties; a 12" aluminum sleeve, in 10 foot sections, will be placed around the plastic sleeve and cable. The casing will be sealed at the shoreward and seaward ends of the existing sleeve and cement grout will be pumped into the sleeve. Finally, two cement grout bags will be placed underneath the cable.

The work will occur during the minus tide periods. As activities will be performed in the vicinity of a harbor seal haulout area, all work will be conducted under the direction of a marine mammal consultant approved by the Executive Director. Said consultant crafted a wildlife mitigation plan under which impacts to the harbor seal colony from the repair work will be avoided. Site disturbance necessary to complete the cable repair will be

minimized to the maximum extent feasible, and debris generated by the repair activities will be collected and properly disposed of.

**Rationale:** The proposed project will not have a significant adverse effect, either individually or cumulatively, on coastal resources, nor will it conflict with the policies of Chapter 3 of the Coastal Act. The project will address and correct an adverse condition created when winter storms damaged the protective sleeve covering the power cable. The power cable resides in a high energy zone, subject to continuous pounding by waves during storms; additional wave stress could lead to failure of the power cable. Such failure would interrupt operations of the two offshore platforms and could expose the public and wildlife to a hazardous situation.

As stated above, this project will be conducted under the direction of a marine mammal consultant, to avoid potential impacts to a nearby harbor seal colony. The repair project will take no more than two days and site disturbance will be minimal. In addition, permission to conduct this project has been received from the National Marine Fisheries Service and the State Lands Commission. Preliminary approval for this project has been indicated by the United States Army Corps of Engineers.

This project is consistent with Section 30230 of the Coastal Act which provides for the maintenance of marine resources. The project is also consistent with Section 30210 of the Coastal Act, which requires that maximum access and recreational opportunities shall be provided, consistent with public safety needs.

**Important:** This waiver is not valid unless the project site has been posted and until the waiver has been reported to the Coastal Commission. This waiver is scheduled to be reported to the Commission on October 14, 1998. If four or more Commissioners object to this waiver, a Coastal Development Permit will be required.

Sincerely,

Peter M. Douglas  
Executive Director

By: Alison Dettmer

Alison Dettmer  
Energy Unit Supervisor

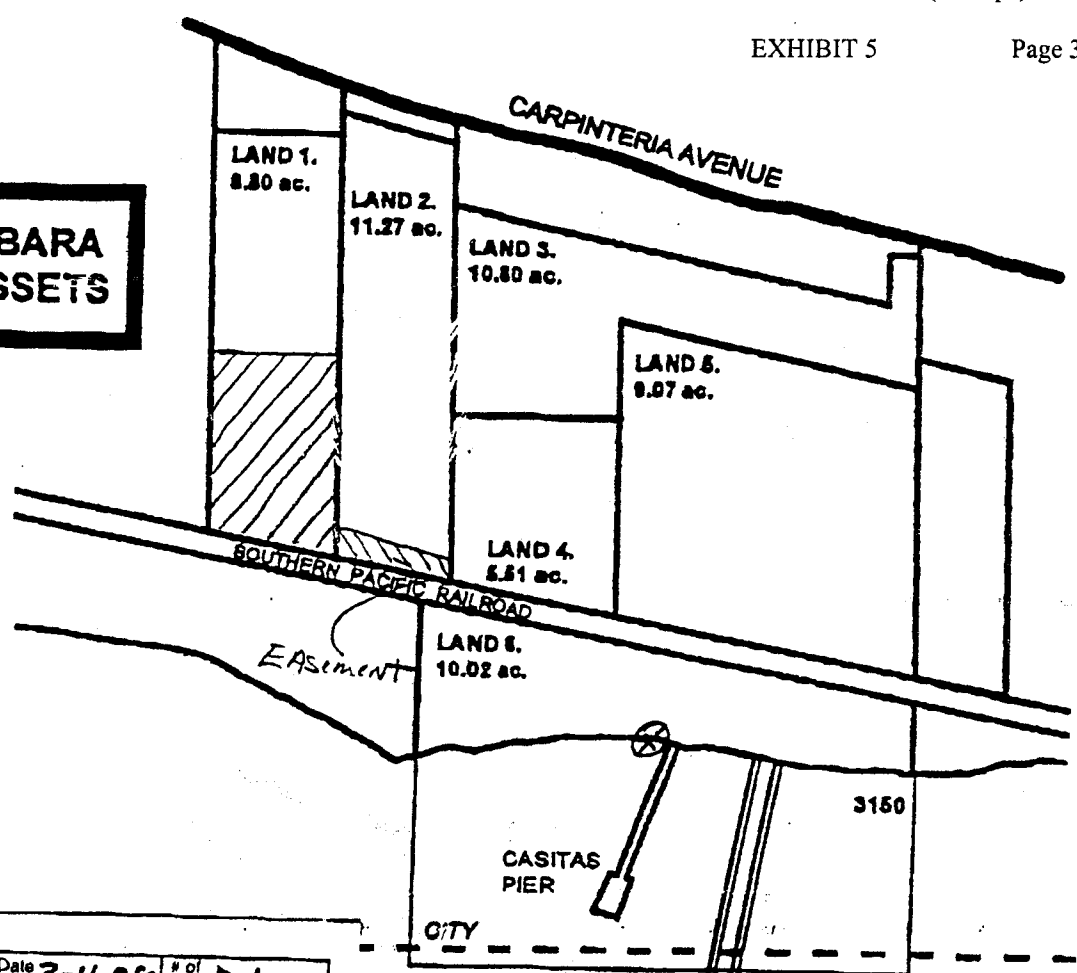
Item: CDP No. E-98-07-W

CCC-03-CD-13 (PacOps)

EXHIBIT 5

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**SANTA BARBARA CHANNEL ASSETS**



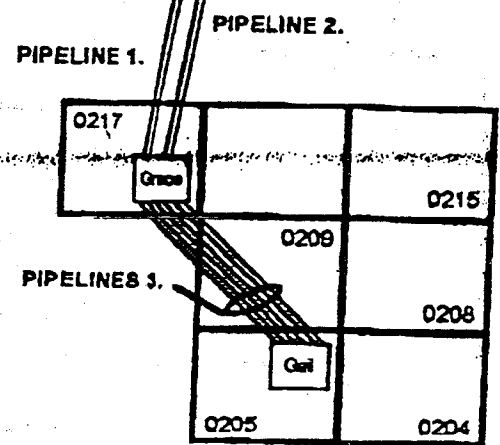
Post-It* Fax Note	7671	Date	3-11-98	# of pages	1
To	D. WALDRON	From	L. RAFAIAN		
Co./Dept.	CLEAN SEAS	Co.	CHEVRON		
Phone #		Phone #	658-4345		
Fax #	684-2650	Fax #	658-4380		

**OWNED BY CHEVRON U.S.A. INC. OR AFFILIATE:**

- Land 1. (APN 1-170-3) - 100% Chevron U.S.A. Inc.
- Land 2. (APN 1-170-4) - 100% Chevron U.S.A. Inc.
- Land 3. (APN 1-170-23) - 100% Chevron U.S.A. Inc.
- Land 4. (APN 1-170-22) - 100% Chevron U.S.A. Inc.
- Land 5. (APN 1-170-14) - 100% Chevron U.S.A. Inc.
- Pipeline 1. (oil) - 100% Chevron Pipe Line Company
- Pipeline 2. (gas) - 100% Chevron U.S.A. Inc.
- Pipeline 3. (gas, oil, spare) - 100% Chevron U.S.A. Inc.
- Platform Grace - 100% Chevron U.S.A. Inc.
- Platform Gail - 100% Chevron U.S.A. Inc.
- OCS Leases 204, 205, 208, 209, 217 - 100% Chevron U.S.A. Inc.

**OWNED BY CHEVRON U.S.A. INC. AND ANOTHER PARTY:**

- Land 6. (APN 1-170-21) - Chevron U.S.A. Inc. (Murvale Company) and Exxon, 50%/50%
- Casitas Pier - Chevron U.S.A. Inc. and Arco, 50%/50%
- Lease 215 - Chevron U.S.A. Inc. and Nuova, percentages vary with depth
- State Lease PRC-3150 - Chevron U.S.A. Inc. and Arco, 50%/50%



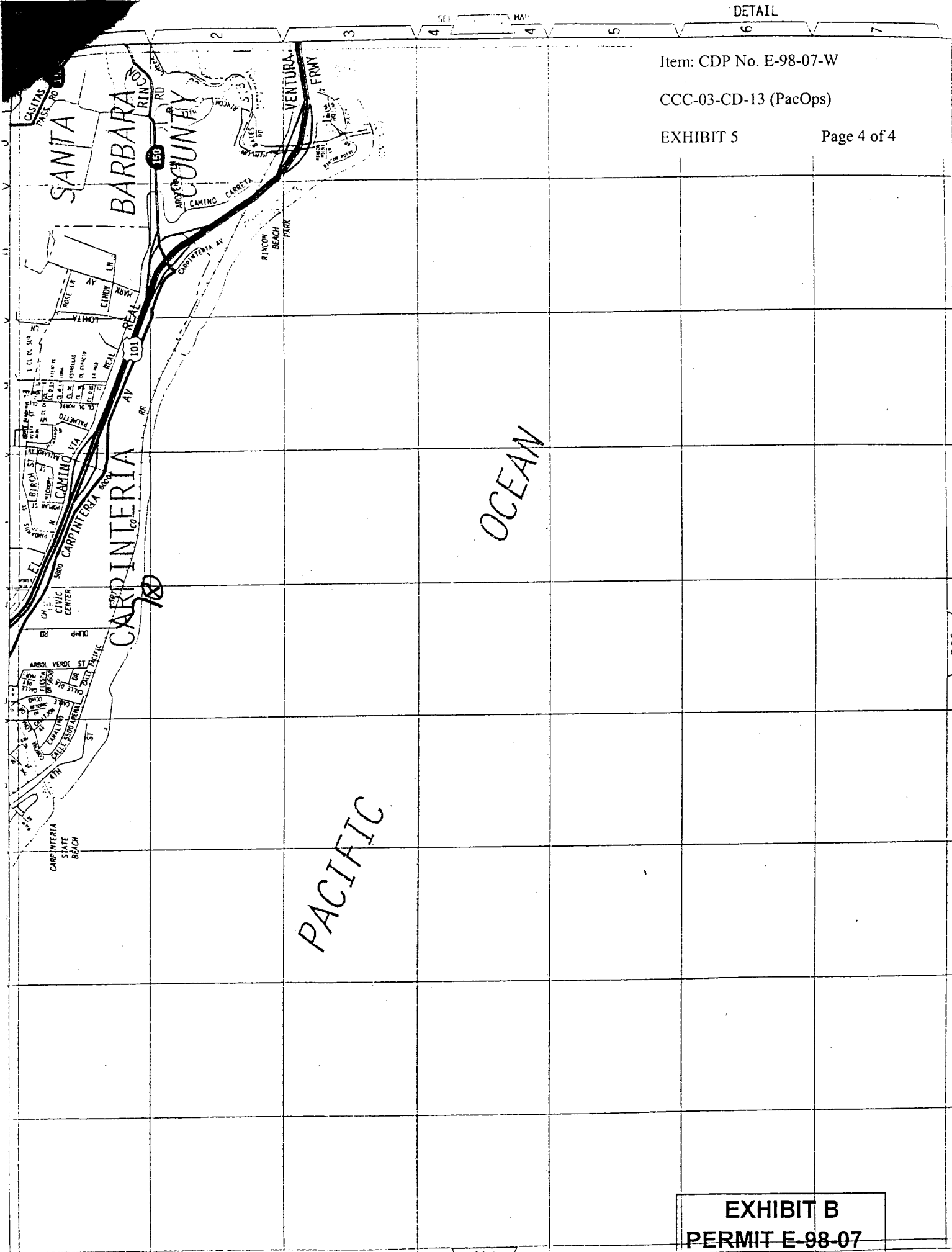
**EXHIBIT A  
PERMIT E-98-07**

Item: CDP No. E-98-07-W

CCC-03-CD-13 (PacOps)

EXHIBIT 5

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SEE 366 MAP

**EXHIBIT B**  
**PERMIT E-98-07**

## CALIFORNIA COASTAL COMMISSION

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



## EMERGENCY PERMIT

January 28, 2003

Item: Emergency Permit No. E-03-001-G

Applicant: Pacific Operators Offshore, Incorporated

CCC-03-CD-13 (PacOps)

*Emergency Permit No. E-03-001-G*

EXHIBIT 6

Page 1 of 7

**Type of Work:** Repair exposed high-voltage power cable supplying electricity to offshore platforms.

**Location of Emergency Work:** Shoreline and nearshore area approximately 70 feet east of Casitas Pier, in Carpinteria, Santa Barbara County. The work would extend from the beach into the surf zone up to no more than approximately 100 feet offshore.

**Background:** The applicant, Pacific Operators Offshore, Incorporated (POOI), operates oil and gas platforms Hogan and Houchin in federal waters off the coast of Carpinteria. Electric power for the platforms is supplied through a 15,000-volt subsea cable which originates onshore at the above location. The cable is encased in concrete and contained within a 12-inch diameter protective metal sleeve. The cable is about 70 feet east of the Casitas Pier, within about 10 and 20 feet, respectively, of an oil pipeline and a natural gas pipeline operated by Venoco, Inc.

The site is a narrow beach with several rock outcrops backed by a steep bluff ranging from approximately 30 to 100 feet high. The beach is subject to very active sand transport, with high rates of scour and deposition due to storm and wave action. According to some observers, the beach elevation can vary seasonally by up to 20 feet due to sand movement. Generally, the sand levels are lower in the late fall, winter, and spring, and higher in the summer.

Approximately 250 feet east of the pier is an area used by Pacific harbor seals (*Phoca vitulina richardsi*) as a breeding, pupping, and haul out area. This is one of four harbor seal rookeries in California. Harbor seals are protected under the federal Marine Mammals Act, which prohibits "take" of marine mammals<sup>1</sup>. The area where the cable and two pipelines come ashore is visible from the seal rookery. The seals use the area for hauling out year round, but the area is of particular importance during pupping season from approximately December 1 to May 31 each year and during molting season during June and July each year. The beach is closed to public access from December 1 to May 31 to prevent disturbance to the seals during pupping season.

The area at the top of the bluff above the beach is used for public access and for observing the seals. The seal rookery is actively monitored by Seal Watch, a local volunteer organization that has kept records of seal observations for over ten years. Numerous visitors come to the site to observe seals.

<sup>1</sup> The definition of "take" under the Act includes intentional or unintentional harassment, any act that could cause injury or death, and any action that changes the behavior of the animal.



Sometime during the winter of 2001, strong storm and wave action removed sand from the area, exposing approximately 50 feet of the cable and removing approximately 40 feet of the cable's metal sleeve. The loss of the sleeve increased the risk that the electrical cable could short out and increased the possibility that the cable could loosen or break and damage the adjacent oil or gas pipelines. At that time, POOI applied for an emergency coastal development permit to replace the lost metal sleeve, but ocean and weather conditions resulted in the sand moving back onto the area and burying the cable. Because this reduced the immediate risk of cable failure, POOI withdrew its request for an emergency permit.

Earlier this month, POOI noted that the cable had become exposed again. The metal sleeve and protective inner coating had worn away along an approximately 80' length of the cable, exposing several portions of bare electrical wire. POOI states that if an object were to come into contact with those portions of the cable, the cable would short out and likely cause an explosion, possibly damage the nearby pipelines, and electrocute any animals in the immediate area.

**Potential impacts to coastal resources:** The proposed project's most significant potential impacts to coastal resources are its possible effects on the harbor seals at the nearby rookery. Work at the project site could result in disturbance of pregnant or nursing seals, abandonment of newborn pups, or flushing of seals into the water. Any of these disturbances could result in "take" as determined by the National Marine Fisheries Service. In addition, public use and enjoyment of the site as expressed by Seal Watch could be affected if the seals are disturbed due to the project. Other potential impacts include those associated with in-water construction, such as pouring concrete, and using various machines and tools in and near the surf zone.

**Proposed Work and Mitigation Measures:** POOI proposes to repair the cable by replacing the lost sections of aluminum sleeve with thicker metal sleeves. The work is anticipated to take place during low tide periods over two days. Proposed work includes shutting off power to the cable, staging the necessary equipment and supplies on a paved parking lot above the beach, moving equipment onto the beach, removing loose or damaged sections of the cable coverings, replacing the metal sleeves, pumping concrete into the space between the cable and the new sleeves, and removing materials and debris from the beach when work is finished. The proposed project is more fully described in a January 9, 2003 letter from POOI's Clement Alberts to Tom Luster, Coastal Commission, and a July 2002 Wildlife Protection Plan prepared for the project.

Recognizing the immediate and severe danger of the exposed cable, the applicant has requested that project work be permitted as soon as possible, which would result in work occurring adjacent to the seal rookery during pupping season and during beach closure. While work done entirely outside of the pupping season would result in the least risk to the seals, work done as soon as possible would likely result in fewer adverse impacts than work done later in the pupping season for the following reasons:

- The longer the cable is exposed, the greater the risk of electrocution, damage to the adjacent pipelines, and disturbance to the seals.
- Seal pupping season generally peaks later in February and March. If the work is done early in the pupping season, there are likely to be fewer pups disturbed.

- Delaying the work could also result in the cable sustaining further damage, which would result in the need for more extensive repairs and could result in more extensive construction-related impacts. Sand levels are generally lower at the site in early winter than later in the winter and spring, and the proposed work on the beach can be done by hand. By waiting until later in the season, the higher sand levels might require the use of mechanized equipment.

The applicant has proposed several measures meant to further avoid or minimize the risk of disturbing the seals, including:

- Conforming to the provisions of the Wildlife Protection Plan developed for the proposed project by the Marine Mammal Consulting Group in Santa Barbara.
- Completing repairs using only hand tools and equipment, hand-carrying all repair material and tools to the beach, and pumping concrete from the paved parking lot above the beach, all to avoid having mechanized equipment on the beach.
- Completing the work during about two days during low tide periods, to minimize the presence of workers and equipment on the beach.

**Other Permits and Approvals:** The applicant is also required to obtain the following permits or approvals:

- U.S. Army Corps of Engineers – Nationwide Permit. This approval would include any required consultation with NMFS regarding compliance with the Marine Mammal Protection Act.
- Regional Water Quality Board – Section 401 water quality certification.
- City of Carpinteria – approval from the City to allow access to the beach during the beach closure period. The City has adopted several ordinances meant to protect the harbor seal colony. From December 1 to May 31 of each year, the beach is off-limits to human use for 750 feet on either side of the colony, and the waters out to 1000 feet offshore are closed to personal watercraft during the same period.

Pursuant to the federal Marine Mammals Protection Act, activities that result in “take” must be authorized by the National Marine Fisheries Service. The applicant has not applied to NMFS for such an approval, but is instead relying on the conditions of its Marine Mammal Protection Plan to prevent “take”. If the project results in “take”, the applicant may be found in violation of the Marine Mammal Protection Act, and could also be found not to be in conformance to Coastal Act policies related to the protection of marine biological resources.

**Public and Agency Involvement:** Coastal Commission staff coordinated with the applicant and representatives of the U.S. Army Corps of Engineers (Corps), National Marine Fisheries Service (NMFS), the Regional Water Quality Control Board, and the City of Carpinteria.

**Executive Director's Determination:** This permit constitutes approval of the emergency work you or your representatives have requested to undertake at the location listed above. I understand from your information that an unexpected occurrence in the form of an imminent threat to human life and marine mammals due to exposure to an electrical cable requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services (14 Cal. Admin. Code § 13009). The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days, unless extended pursuant to the terms of the permit;
- (b) If the necessary work is done immediately, it is likely to result in fewer impacts to coastal resources than if the work is done later in the pupping season when there is likely to be more seal pups in the rookery and more sand present on the beach, which could require extensive excavation using mechanized equipment.
- (b) Public comment on the proposed emergency action has been reviewed as time allows; and
- (c) As conditioned, the proposed work would be consistent with the requirements of the California Coastal Act of 1976. This emergency permit, as conditioned, also serves as the certification of consistency required under the federal Coastal Zone Management Act.

The work is hereby approved, subject to the attached conditions.

Sincerely,

---

PETER M. DOUGLAS  
Executive Director

By: \_\_\_\_\_



ALISON J. DETTMER  
Manager  
Energy and Ocean Resources Unit

**Permit Conditions**

1. This permit is not valid until a copy of the permit is signed by the permittee or authorized agent, acknowledging receipt of the permit and the acceptance of the terms and conditions, is returned to the Commission office.
2. The authorization conferred by this emergency permit to conduct the activities described in the application shall expire with 30 days of the date of this permit unless, before that date, the applicant applies for and the Executive Director grants for good cause, an extension of that expiration date.
3. The applicant shall not deviate from the operations, timing, or sequence of operations specified in the application unless and until authorized by the Executive Director.
4. Within 45 days of issuance of this emergency permit, the applicant shall submit to the Coastal Commission a regular coastal development permit application to authorize the activities approved herein.
5. Work done pursuant to this emergency permit shall be limited to the measures needed to eliminate the immediate danger caused by the exposed electrical cable. Repair or maintenance work not needed to eliminate the immediate danger is not authorized by this emergency permit and may require additional review and approval through a regular coastal development permit.
6. All work shall be conducted under the direction of Mr. Daniel Pagenkoph, an NMFS-approved marine mammal monitor. Work shall also conform to the conditions in the Wildlife Protection Plan developed for the project by the Marine Mammal Consulting Group, except as modified by conditions of this permit. Mr. Pagenkoph shall ensure that the applicant fully complies with the conditions of this permit. All work, including equipment delivery and removal, worker arrival and departure, staging, construction, and demobilization, shall occur only when Mr. Pagenkoph is on site. Before starting work, all personnel shall be instructed by Mr. Pagenkoph on measures necessary to avoid or minimize disturbance to the seals.

This permit does not authorize disturbance of any marine mammals. If in the judgment of Mr. Pagenkoph such a disturbance occurs, the applicant shall immediately take the following measures:

- All repair work shall stop.
- Equipment shall be secured in place or removed from the beach area to the staging area, whichever is determined by Mr. Pagenkoph to be less disturbing to the seals.
- All workers shall either remain in place or shall leave the beach area and go to the staging area, whichever is determined by Mr. Pagenkoph to be less disturbing to the seals.
- The disturbance and the action causing the disturbance, if known, shall be noted in the monitoring report to be prepared as described in the Wildlife Protection Plan.

Item: Emergency Permit No. E-03-001-G

CCC-03-CD-13 (PacOps)

EXHIBIT 6

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7. The applicant shall make a video and audio recording of the seal rookery during work associated with the project. The recording shall be of quality adequate to concurrently identify activity associated with the repair (e.g., movement of workers or equipment, sound generated by the work, etc.) and activity at the seal rookery. Recording shall begin before starting the repair work and shall continue while there is work or equipment associated with the project at the project site. A copy of the recording shall be made available upon request by the Executive Director of the Coastal Commission.
8. Mobilization, staging, and de-mobilization activities at the beach or parking lot shall be limited to no more than a one-week period and shall be completed within 30 days of issuance of this permit. Repair work on the beach shall be limited to no more than four twelve-hour periods during the one-week mobilization/de-mobilization period.
9. Staging and equipment storage shall occur out of sight of the seals at the lower or upper parking lots. If feasible, the upper parking lot will be used.
10. No mechanized, pneumatic, or hydraulic equipment shall be allowed on the beach. All work on the beach shall be done with hand tools only (e.g., hand shovels, wrenches, pry bars, etc.). If necessary, a cutting torch may be used to remove bolts or sleeves from the cable.
11. Noise shall be minimized during staging, construction, and demobilization. When feasible, equipment shall be padded to reduce noise (e.g., hammers, wrenches, etc., shall be wrapped to prevent metal-on-metal contact).
12. Concrete pumped to the cable area shall be provided by a pump located on the parking lot above the beach. All feasible measures shall be taken before starting concrete work to prevent concrete from leaking from the cable sleeves. Concrete shall be pumped at a rate to minimize any spills or leaks into coastal waters. To avoid disturbance of the seals, the pump shall be located away from the bluff edge and noise shall be minimized through muffling or by housing the pump within noise-reducing material.
13. Bolts and other protuberances on the repaired cable shall be coated and wrapped with suitable material to provide a smooth surface that will reduce the possibility of harm to human or marine life and will reduce snagging of marine debris.
14. Equipment used to deliver supplies, workers, etc. shall be fueled at locations other than the upper or lower parking lot. Equipment shall be inspected daily for fuel or fluid leaks. Leaking equipment shall be repaired or replaced immediately. The applicant shall maintain on-site spill containment equipment (e.g., absorbent materials, containment booms, etc.) adequate to respond to any fuel or oil spills or leaks from project-related vehicles and equipment.
15. Best management practices (BMPs) for construction activities contained in the California Storm Water Best Management Practices Handbook (March 1993) or other BMPs shall be implemented, as applicable, during the project to minimize erosion and limit sedimentation of receiving waters.

16. The bluff face or toe of the bluff slope along the beach shall not be altered in any way.

17. All project debris from the project shall be recovered immediately.

**Acknowledgment:**

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code § 818.4 which states in pertinent part that “A public entity is not liable for injury caused by issuance ... of any permit...” applies to this permit.

**IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CCR § 13158(a).**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Permittee

## CALIFORNIA COASTAL COMMISSION

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



# Th17a

Date Filed: 5/29/03  
 49<sup>th</sup> Day: 7/17/03  
 180<sup>th</sup> Day: 11/25/03  
 Staff: MVC-SF  
 Staff Report: 8/21/03  
 Hearing Date: 9/11/03  
 Commission Action/Vote:

## ADMINISTRATIVE PERMIT

**Application No.:** E-03-002  
**Project Applicant:** Pacific Operators Offshore, Inc.  
**Project Location:** Casitas Beach near Casitas Pier at Dump Road, Carpinteria, Santa Barbara County (See Exhibit 1, "Project Location")  
**Project Description:** Repair of electrical cable sheath due to damage caused by erosion and tidal activity, including replacement of sections of aluminum casing and pumping of cement into the annulus created by the replacement aluminum casing.

**EXECUTIVE DIRECTOR'S DETERMINATION:** The findings for this determination, and for any special conditions, appear on subsequent pages.

**NOTE:** Public Resources Code § 30624 provides that this permit shall not become effective until it is reported to the Commission at its next scheduled meeting. If one-third or more of the appointed Commissioners so request, the Executive Director's permit issuance shall not be effective, and the application shall be set for public hearing at a subsequent Commission meeting. This permit will be reported to the Commission at the following time and location:

**DATE:** Thursday, September 11, 2003  
**TIME:** 9 A.M.  
**PLACE:** Eureka Inn  
 518 Seventh Street  
 Eureka, CA  
 (707) 442 6441

Item: CDP No. E-03-002

CCC-03-CD-13 (PacOps)

EXHIBIT 7


Page 1 of 12

**IMPORTANT – Before you may proceed with development, the following must occur:**

Pursuant to 14 CCR §13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

**BEFORE YOU MAY PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.**

PETER M. DOUGLAS  
Executive Director

By:   
ALISON J. DETTMER  
Manager  
Energy and Ocean Resources Unit

**ACKNOWLEDGEMENT OF PERMIT RECEIPT AND ACCEPTANCE OF CONTENTS:**

The undersigned permittees acknowledge receipt of this permit and agree to abide by all terms and conditions thereof.

The undersigned permittees acknowledge that Government Code § 818.4 states in pertinent part that: "A public entity is not liable for injury caused by issuance ... of any permit" applies to issuance of this permit.

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_



## STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Cable Inspection.** By July 1 of each year for the operating life of the electrical cable, POOI shall inspect for structural integrity those segments of its electrical cable that lie in the surf zone and beach. POOI shall perform at least one visual inspection with binoculars and a camera during the beach closure (December 1 through May 31) before May 31 of each year when sand levels are still low, and one up-close inspection of the cable shall be performed after May 31 and before July 1. By August 1 of each year, POOI shall submit the results of each annual inspection to the Executive Director of the Coastal Commission and the City of Carpinteria. The report shall include photographs of the cable while uncovered by sand, a written description of the condition of the cable and its protective coatings, and a written assessment of whether any repair or maintenance work may be necessary before the next storm season and annual beach closure. POOI shall submit to the Coastal Commission within 60 days of submitting the structural assessment report either an amendment application or new permit application if the report recommends any necessary repair or maintenance work that would require a coastal development permit.

### 1.0 EXECUTIVE DIRECTOR'S DETERMINATION

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC § 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to Standard and Special Conditions,

Item: CDP No. E-03-002

CCC-03-CD-13 (PacOps)

EXHIBIT 7

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the proposed development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act.

## **2.0 FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION**

### **2.1 Project Background**

Pacific Operators Offshore, Inc. ("POOI") operates offshore oil and gas platforms Hogan and Houchin in federal waters off the coast of Carpinteria, and owns a 15,000 volt subsea electrical cable which originates onshore at the beach approximately 70 feet east of Casitas Pier in Carpinteria (See Exhibit 1, "Project Location"). The electrical cable supplies electric power to the platforms. The cable was encased in concrete and contained within 12-inch diameter protective metal sleeves.

In May 1998, the Executive Director issued Emergency Permit E-98-07-G for the repair of 90 feet of the electrical cable's protective covering and sleeve, which were damaged by wave-driven cobblestones, leaving the cable exposed. During the winter of 2002, strong storm and wave action removed sand from the area, exposing approximately 50 feet of the cable and removing approximately 40 feet of the cable's metal sleeve. The loss of the sleeve increased the risk that the electrical cable could short out and the possibility that the cable could loosen or break and damage the adjacent oil and gas pipelines owned by Venoco, Inc. At that time, POOI requested an emergency coastal development permit to replace the lost metal sleeve, but ocean and weather conditions resulted in the sand moving back onto the area and burying the cable. Because this reduced the immediate risk of cable failure, POOI withdrew its request for an emergency permit.

### **2.2 Project Description**

In January 2003, POOI noted that the electrical cable had become exposed again. The metal sleeve and protective concrete coating had worn away along approximately 80 feet of cable, exposing several portions of bare electrical wire. POOI asserted that if an object were to come into contact with those portions of the cable, the cable would short out and likely cause an explosion, possibly damage nearby pipelines, and possibly electrocute the harbor seals belonging to the seal colony present in the immediate area. POOI therefore requested from the Executive Director of the Coastal Commission an emergency permit to replace lost sections with thicker metal sleeves and replace the coating material, and the Executive Director granted Emergency Permit E-03-001-G. In its project description for the emergency permit, POOI proposed to conform to a Wildlife Protection Plan, complete repairs during low tides using only hand tools and equipment, hand-carry all repair material and tools to the beach, and pump concrete from the paved lot above the beach into to avoid placing mechanized equipment on the beach. POOI performed its work January 27-30, 2003, over a period of three days.

In this application, POOI seeks authorization to make permanent the emergency work undertaken under the authority of Emergency Permit E-03-001-G. That work included: staging equipment and supplies on a paved parking lot above the beach, moving equipment onto the beach, removing loose or damaged sections of the cable coverings, replacing the metal sleeves,

pumping cement into the annulus between the cable and the new sleeves, and removal of materials and debris from the beach upon completion of work.

## **2.3 Other Agency Approvals**

### **2.3.1 City of Carpinteria**

The City of Carpinteria is not requiring a permit or other approval for the repair activity. However, POOI never obtained from the City an authorization to perform the emergency work on the beach during the City-mandated beach closure (December 1<sup>st</sup> through May 31<sup>st</sup> of each year). The City may pursue enforcement action.

### **2.3.2 U.S. Army Corps of Engineers**

The U.S. Army Corps of Engineers issued a nationwide permit authorization letter on January 28, 2003 stating that the proposed project qualified for Nationwide Permit 12. The Army Corps' authorization followed the issuance of Emergency Permit E-03-001-G, and the authorization letter states that the authorization is only valid for a period of two years.

### **2.3.3 Regional Water Quality Control Board**

The Central Coast Regional Water Quality Control Board issued a technically-conditioned 401 Water Quality Certification for the project on January 27, 2003.

### **2.3.4 National Marine Fisheries Service**

The National Marine Fisheries Service issued a January 27, 2003 letter to the applicant, informing them of the provisions of the Marine Mammal Protection Act ("MMPA") as they related to the proposed project. The letter noted that although the applicant submitted a Wildlife Protection Plan, impacts to marine mammals could nevertheless occur, and the applicant elected not to apply for an incidental harassment authorization.

## **2.4 Coastal Act Issues**

### **2.4.1 Fill Policy**

Coastal Act § 30233(a) states:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

*(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*

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- (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource dependent activities.*

Coastal Act Section 30108.2 defines "fill" as "earth or any other substance or material ... placed in a submerged area." The placement of metal sleeves and a concrete annulus for the applicant's electrical cable in open coastal waters constitutes "fill" as that term is defined in the Coastal Act. Coastal Act Section 30233 restricts the Commission from authorizing a project that requires filling open coastal waters unless it meets three tests. The first test requires the proposed activity to fit within one of eight categories of uses described in Coastal Act Section 30233(a)(1)-(8). The second test requires that there be no feasible less environmentally damaging alternatives to the fill. The third test mandates that feasible mitigation measures be provided to minimize the project's adverse environmental effects.

- 1) Allowable Use Test: Coastal Act Section 30233(a)(1) allows fill in open coastal waters for "new or expanded port, energy, and coastal-dependent industrial facilities." The purpose of the proposed fill is to repair the applicant's electrical cable, and this cable is an essential part of the infrastructure of a coastal-dependent industrial facility and operation of offshore oil platforms. Therefore, the Commission finds that the proposed placement of metal sleeves and a concrete annulus surrounding the electrical cable qualify as an allowable use pursuant to Coastal Act Section 30233(a)(1).
- 2) No Feasible Less Environmentally Damaging Alternatives: The second test of section 30233 requires an assessment of whether there are feasible less environmentally damaging alternatives to the fill. The purpose of the fill in this circumstance is to protect a high-voltage electrical cable with metal sleeves and a concrete annulus, to prevent a short or explosion in the cable. The applicant considered the following project alternatives:
  - (a) No Project. The no-project alternative would not solve the problem of the exposed high-voltage electrical cable, which could short or explode if it remained exposed.

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The no-project alternative could also be much more environmentally damaging than the proposed project if the lack of protection of the electrical cable resulted in a catastrophic short or explosion near the adjacent harbor seal rookery.

- (b) Delay of Project. If the proposed project were to be implemented later in the pupping season (e.g., February or March), the probability of impacts to harbor seals from project activities would be greater, as seal pupping usually peaks in February or March. In addition, delay of the project until after the pupping season (i.e., after May) would increase the risk of a catastrophic failure of the cable and a short or explosion of the cable.

The above-described alternatives either do not achieve project objectives, or would have greater environmental impacts than the proposed project. The Executive Director thus agrees that the proposed project is the least environmentally damaging feasible alternative.

- 3) Feasible Mitigation Measures: The third test under Section 30233 requires that the project include feasible mitigation measures to minimize adverse environmental effects. The emergency permit issued for this project required implementation of construction-related measures to avoid or minimize adverse impacts to coastal resources such as marine mammals. In other sections of this report, the Executive Director has found that allowing the fill to remain will not adversely affect coastal resources. The Executive Director thus finds that the third test of Coastal Act Section 30233(a) has been met.

#### 2.4.2 Marine Resources

Coastal Act § 30230 states:

*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.*

##### 2.4.2.1 Marine Mammals

The area immediately east of the electrical cable is used by Pacific harbor seals (*Phoca vitulina richardsi*) as a pupping and haul out area. The seals use the area for hauling out year round, but the area is of particular importance during pupping season from December through May of each year, and during molting season during June and July each year. The beach is closed to the public from December 1 to May 31 to prevent disturbance to the seals during pupping season under City of Carpinteria municipal ordinance 12.24.090. This harbor seal colony is one of only two seal colonies along the mainland coast of Southern California that is accessible to the public.

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Harbor seals are protected under the Marine Mammal Protection Act ("MMPA"), which defines "take" as to "harass," hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal. The National Marine Fisheries Service ("NMFS") is the federal authority with authority to enforce the MMPA and to issue Incidental Harassment Authorizations ("IHAs") for limited impacts to marine mammals. The applicant, POOI, chose not to apply for an incidental harassment authorization for the proposed project. An *ad hoc* citizens group called Seal Watch was formed in 1990 to educate the public about the Carpinteria seal colony and to advocate for protection of the seal colony, and the group's volunteers monitor the colony from January through April of every year from a bluff located above the colony's haul-out area. The volunteers record the numbers of animals seen hourly, as well as disturbances to the colony.

The proposed project had the potential to disturb the harbor seals due to presence of project personnel and equipment and project noise. Therefore, during project activities, a marine mammal monitor was present onsite to implement the applicant's Wildlife Protection Plan. The Wildlife Protection Plan included measures to prevent and minimize potential impacts to the harbor seals, including work during daylight hours only; briefings for work personnel on measures to minimize disturbance; disconnection of audible backup alarms on large work trucks; restriction of shouting, loud noises, and quick movements; and restriction of the number of people on the beach to a minimum.<sup>1</sup>

Now that construction is complete, the development will not cause ongoing adverse impacts to marine mammals. To further minimize potential future impacts, and to minimize the possibility that emergency, repair or maintenance work will disturb seals during pupping season, **Special Condition 1** requires that by July 1 of each year for the operating life of the electrical cable, POOI shall inspect for structural integrity those segments of the electrical cable that lie in the surf zone and beach. POOI shall perform at least one visual inspection with binoculars and a camera during the beach closure (December 1 through May 31) before May 31 of each year when sand levels are still low, and an up-close inspection of the electrical cable shall be performed after May 31 and before July 1. By August 1 of each year, POOI shall submit the results of each annual inspection to the Executive Director of the Coastal Commission and the City of Carpinteria. The report shall include photographs of the electrical cable while uncovered by sand, a written description of the condition of the cable and its protective coatings, and a written assessment of whether any repair or maintenance work may be necessary before the next storm season and annual beach closure. POOI shall submit to the Coastal Commission within 60 days of submitting the structural assessment report either an amendment application or new permit application if the report recommends any necessary repair or maintenance work that would require a coastal development permit.

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<sup>1</sup> The work authorized under Emergency Permit E-03-001-G was carried out over a three-day period from January 28-30, 2003 during the harbor seal pup season. The marine mammal monitoring report noted that up to 108 adult seals were present on the beach during project activities, depending on the time of day. According to the Marine Mammal Log prepared by the marine mammal monitor, some disturbances to the harbor seals occurred during project activities, including: a disturbance to 20 seals from an audible backup truck alarm on Casitas Pier on 1/28/03; and a 'major' disturbance to seals from a loud sound of unknown cause or origin on 1/29/03. (*Letter and monitoring report from Daniel Pagenkopf to Clement Alberts, POOI, dated February 9, 2003*) NMFS is currently reviewing the monitoring report and videotape of the project, and is still investigating the incident to determine if any violation of the MMPA occurred.

The Executive Director thus finds that the project, as conditioned, will be carried out in a manner that maintains healthy populations of marine organisms, as required by Coastal Act Section 30230.

### 2.4.3 Water Quality

Coastal Act § 30231 states:

*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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Intertidal project activities could suspend sand and silt near the work area, thereby increasing local turbidity. The work occurred only during low tide periods, and any disturbance of sediments was short-term. There are no adverse water quality impacts due to operation of the electrical cable.

The Executive Director thus finds that the biological productivity and quality of coastal waters is maintained and therefore the project is consistent with Coastal Act Section 30231.

### 2.4.4 Public Access and Recreation

Coastal Act § 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act § 30211 states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act § 30220 states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*



Coastal Act § 30234.5 states:

*The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

The project location on the beach and nearshore areas adjacent to Casitas Pier are used by the public for various recreational purposes, including walking, hiking, and running on the beach, swimming, fishing, tide pool observing, kayaking, and observation of the seal rookery from the Carpinteria Bluffs. Approximately 800,000 people visit the adjacent Carpinteria State Beach per year, and many of these visitors also visit the project area. City of Carpinteria municipal ordinance 12.24.090 closes the beach in the project area during harbor seal pupping season, from December 1 through May 31 each year. The work performed under Emergency Permit E-03-001-G occurred between January 28, 2003 and January 30, 2003, during the City-mandated beach closure. Therefore, the project did not affect public recreation in the project area, due to the fact that the beach closure was in effect at that time. Ongoing operation of the electrical cable does not impact the public's access to and use of the beach.

The Executive Director thus finds that the project will not interfere with the public's access to and recreational use of the coast. The project is therefore consistent with Coastal Act Sections 30210, 30211, 30220, and 30234.5.

### **3.0 Alleged Violation**

A violation took place due to the failure to comply with Special Condition 4 of Emergency Permit E-03-001-G, which required the applicant to submit a complete regular Coastal Development Permit application within 45 days of issuance of the Emergency Permit.

In addition, at the same time that the work approved under E-03-001-G and this Administrative Permit was performed, development consisting of the free-form pouring of at least 1-2 (and possibly as much as 7) cubic yards of concrete over the electrical cable took place without benefit of a coastal development permit. This unauthorized concrete 'cap' was not proposed or addressed by Emergency Permit E-03-001-G or this follow up permit E-03-002, as this development is outside of the scope of activities or project description contemplated in either permit. The Commission's enforcement division will evaluate further actions to address this matter.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

### **4.0 California Environmental Quality Act**

The Coastal Commission's permit process has been designated by the State Resources Agency as the functional equivalent of the CEQA environmental impact review process. Pursuant to Section 21080.5(d)(2)(A) of the CEQA and Section 15252(b)(1) of Title 14, California Code of

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Regulations (CCR), the Commission may not approve a development project "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment." The Executive Director finds that only as conditioned are there no feasible less environmentally damaging alternatives or additional feasible mitigation measures that would substantially lessen any significant adverse impact which the activity may have on the environment, other than those identified herein. Therefore, the Executive Director finds that the project as fully conditioned is consistent with the mitigatory requirements of the CEQA.

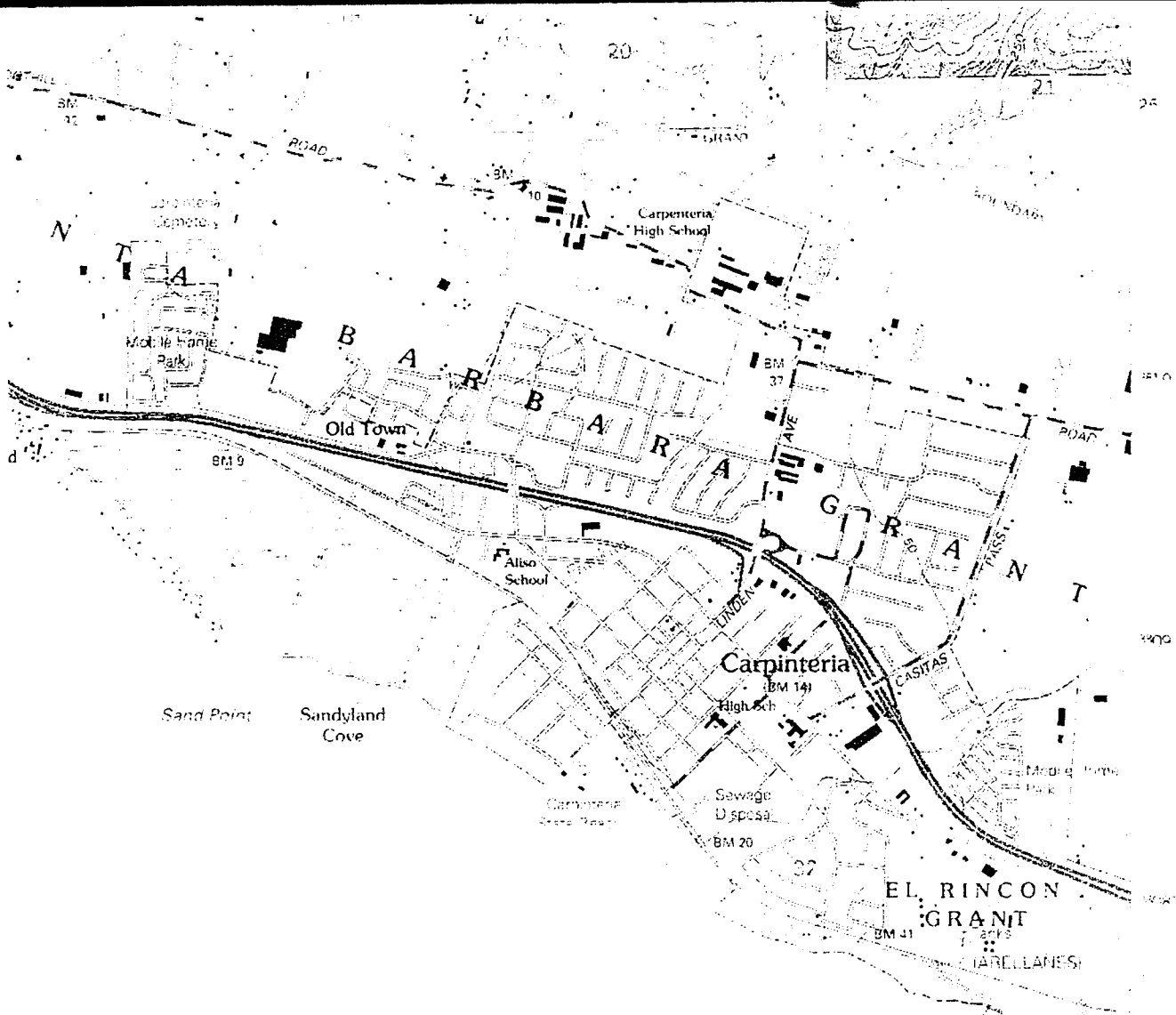
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<b>EXHIBIT NO. 1</b>
<b>APPLICATION NO.</b>
E-03-002
<b>Project Location</b>

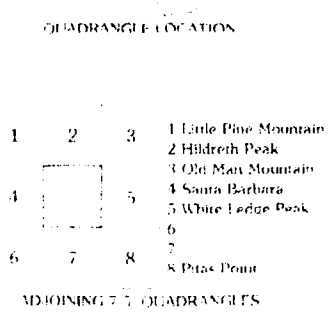


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- U.S. ...
- State ...
- County ...
- National Forest, suitable for passenger cars
- National Forest, suitable for high clearance vehicles
- National Forest Trail

HIGHWAYS AND ROADS

- Primary highway
- Secondary highway
- Light-duty road
- Composition: Unspecified
- Paved
- Gravel
- Dirt
- Unimproved: 4 wheel drive
- Trail
- Gate: Barrier

**CARPINTERIA, CA**  
1995

NIMA 2052 LNF SERIES V895

## CALIFORNIA COASTAL COMMISSION

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



**SENT BY CERTIFIED MAIL**  
**No. 7001 2510 0008 1925 4377**

Item: Notice of Violation letter 4/10/03

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April 10, 2003

Clement M. Alberts  
Pacific Operators Offshore, LLC  
205 Carrilo Street, Suite 200  
Santa Barbara, CA 93101

RE: **Alleged Coastal Act Violation No. V-7-03-001** (Pacific Operators Offshore, LLC), consisting of the unpermitted pumping of cement at the terminus of an existing power cable located on the shoreline and in the nearshore area approximately 70 feet east of Casitas Pier in Carpinteria, Santa Barbara County

Dear Mr. Alberts:

I am writing concerning the above-referenced alleged Coastal Act violation by Pacific Operators Offshore, LLC, consisting of the unpermitted pumping of cement around a recently repaired power cable to construct a cement pad and covering at the upper end of the cable sheath (at the cable terminus) near Casitas Pier.

As you are aware, on January 28, 2003, the Coastal Commission issued **Emergency Permit No. E-03-001-G**, authorizing repair of the metal sleeves and casing of an exposed 80-foot section of power cable that supplies electricity to offshore oil platforms *Hogan* and *Houchin*. Apparently, during this repair work, unpermitted development also took place consisting of construction of a cement pad and cement cap over the cable terminus that was not included in the permit's project description.

Pursuant to Section 30106 of the Coastal Act:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or*

*alteration of the size of any structure, ... and the removal or harvesting of major vegetation other than for agricultural purposes... (Emphasis added)*

As such, the placement of cement and construction of a cement pad and cement cap over the cable terminus constitute development under the Coastal Act. Section 30600(a) of the Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit, in addition to any other permit required by law, before carrying out any development. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act. Therefore, the construction of a cement pad and cap and filling of open coastal waters constitutes a Coastal Act violation.

The Coastal Act contains enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against the subject property.

In addition, Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either a cease and desist order or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Special Condition No. 4 of **Emergency Permit No. E-03-001-G** required submittal within 45 days of issuance of the emergency permit, a regular coastal development permit application to authorize the activities approved by the emergency permit. That application, **Coastal Permit Application No. E-03-002**, was received on March 5, 2003 and is still pending.

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To resolve the Coastal Act violation on the subject property, you will need to amend **Coastal Permit Application No. E-03-002** to include a request to either retain or remove the unpermitted placement of cement around the power cable. At this time, it is not clear whether the unpermitted development is approvable under Coastal Act Section 30233, which states that filling of open coastal waters shall be permitted only where there is no feasible less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and only for certain uses. Our Energy and Ocean Resources Staff will need to obtain from you additional information about the unpermitted work before being able to make a determination about whether the work is allowable under Section 30233 of the Coastal Act. Should it be determined that it is not allowable, you would need to amend **Coastal Permit Application No. E-03-002** to include a request to remove the unpermitted cement construction, to continue resolution of this case.

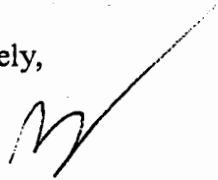
Please submit in writing by April 18, 2003 to Marina Cazorla of our Energy and Ocean Resources staff the following information about the cement construction:

1. Exact amount of cement pumped for construction of the cement pad and cement cap over the cable terminus;
2. Width and depth of cement pad;
3. Specific purpose of this construction;
4. Material safety data sheet for cement used for construction;
5. An alternatives analysis that demonstrates that the poured cement was the least environmentally damaging alternative for achieving its purpose.

Failure to respond in a timely manner may result in more formal action by the Commission to resolve the Coastal Act violation. The formal action could include a civil lawsuit, the issuance of a cease and desist and/or restoration order, and/or imposition of monetary penalties, pursuant to Coastal Act sections 30810 and 30820(a) and (b).

If you have any questions about enforcement, you may contact me at (415) 904-5269. If you have questions about your coastal permit application or the additional information we are requesting, please contact Marina Cazorla at (415) 904-5249. Thank you for your cooperation.

Sincerely,



JO GINSBERG  
Enforcement Analyst

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cc: Marina Cazorla, Energy and Ocean Resources  
Alison Dettmer, Manager, Energy and Ocean Resources

## CALIFORNIA COASTAL COMMISSION

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



April 17, 2003

Clement M. Alberts  
Pacific Operators Offshore, LLC  
205 Carrillo Street, Suite 200  
Santa Barbara, CA 93101

RE: **Alleged Coastal Act Violation No. V-7-03-001** (Pacific Operators Offshore, LLC), consisting of the unpermitted pumping of cement at the terminus of an existing power cable located on the shoreline and in the nearshore area approximately 70 feet east of Casitas Pier in Carpinteria, Santa Barbara County

Dear Mr. Alberts:

I am writing again concerning the above-referenced alleged Coastal Act violation by Pacific Operators Offshore, LLC, consisting of the unpermitted pumping of cement around a recently repaired power cable, to construct a cement pad and covering at the upper end of the cable sheath (at the cable terminus) near Casitas Pier.

In my previous letter dated April 10, 2003, I requested that you submit by April 18, 2003 information about the cement construction. As you only received this letter on April 15th, I am extending the deadline for your response to April 28, 2003, per your request for a time extension.

I have discussed the above-referenced Coastal Act violation with Marina Cazorla of our Energy and Ocean Resources Division, and based on my conversation with her, and the contents of your email to her from April 16, 2003, I wish to clarify our staff's position on the Coastal Act violation.

In your email to Marina, you opine that the construction of the cement cap and pad constitutes repair and maintenance of an existing structure, and, thus, did not require a coastal permit. You further opine that the "necessary repairs were affected in a manner consistent with the general conditions of the [emergency] permit, and in the spirit and intent of the Coastal Act." We do not agree with this assessment of the situation.

First, pursuant to Section 13252(a)(3) of the Commission's *Administrative Regulations*, a coastal permit is required for:

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(3) Any repair and maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

- (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;
- (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

Thus, the unpermitted construction of a cement pad and cap, even if considered to be "repair and maintenance" of an existing cement structure, requires a coastal development permit.

Further, **Emergency Permit No. E-03-001-G** temporarily authorized repair work to an 80-foot section of power cable, whose metal sleeve and protective inner coating had worn away, thus exposing a portion of the cable. The proposed repair work was described as replacing the lost sections of aluminum sleeve with thicker metal sleeves and pumping cement into the annulus between the cable itself and these metal sleeves. Your emergency permit application did not make mention of pouring cement onto the cable surface and onto the beach for a pad and/or cap for the cable. **Emergency Permit No. E-03-001-G** did not authorize the pouring of cement for a pad and/or cap for the cable. Condition No. 3 of the emergency permit states that "*The applicant shall not deviate from the operations, timing, or sequence of operations specified in the application unless and until authorized by the Executive Director.*" As construction of a cement pad and/or cap was not proposed as part of the emergency permit application, and was not approved by the Executive Director, who authorized the proposed emergency work pursuant to the terms and conditions of **Emergency Permit No. E-03-001-G**, this unpermitted activity constitutes a deviation from specified operations in your emergency permit application approved by the Executive Director and is therefore a violation of the terms and conditions of the emergency permit, and of the Coastal Act.

Further, the construction of an unengineered cement pad and/or cap in the surf zone is an activity that appears to be inconsistent with Section 30233 of the Coastal Act, which allows filling of open coastal waters only for certain limited uses, and only where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. Based on the information currently available, it is our staff's conclusion that the cement cap and pad were not properly engineered (if at all), and may have the potential to cause a premature failure of the cable. (Please feel free to provide us with any additional information you have concerning the engineering of the cement pad and/or cap.) Our staff therefore cannot conclude that there is no feasible less environmentally damaging alternative, and thus Coastal Commission staff would likely not find this activity to be consistent with the Coastal Act.

It is our opinion that the best way to resolve the outstanding Coastal Act violation that consists of the unpermitted construction of a cement pad and/or cap at the terminus of the cable would be to



CLEMENT ALBERTS

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amend **Coastal Permit Application No. E-03-002** to include removal of the cement pad and cap. The permit application can also be amended to include a proposal for a properly engineered method of stabilizing the power cable that can be demonstrated to be the least environmentally damaging alternative and that is consistent with Coastal Act policies.

Since our staff has indicated that it is not likely to make a recommendation for approval to retain the unpermitted cement pad and cap, we do not recommend that you amend your coastal permit application to seek retention of the cement pad and cap. Should you propose retention of the unpermitted cement pad and cap, it is possible that our Enforcement Staff might recommend that the Coastal Commission issue a Cease and Desist and/or Restoration Order, ordering removal of the cement pad and cap and/or restoration of the disturbed area.

If you have any additional questions about enforcement, you may contact me at (415) 904-5269. If you have questions about your coastal permit application or the additional information we are requesting, please contact Marina Cazorla at (415) 904-5249. Thank you for your cooperation.

Sincerely,



JO GINSBERG  
Enforcement Analyst

cc: Marina Cazorla, Energy and Ocean Resources  
Alison Dettmer, Manager, Energy and Ocean Resources

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## PACIFIC OPERATORS OFFSHORE, LLC

205 E. CARRILLO STREET, SUITE 200  
SANTA BARBARA, CALIFORNIA 93101  
PHONE 805 899-3144 • FAX 805 899-3166

April 25, 2003

Ms. Jo Ginsberg, Enforcement Analyst  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco CA 94105-2219

**RE: Alleged Coastal Act Violation No. V-7-03-001**

Dear Ms. Ginsberg,

This is in response to your letters dated April 10<sup>th</sup> and April 17<sup>th</sup> and with reference to that letter dated April 17<sup>th</sup> by Ms. Marina Cazorla.

In response to your request for specific items of information relating the cement cap as they appeared on page two of your April 10<sup>th</sup> letter:

1. An approximate volume of one cubic yard of cement was deposited.
2. Width of the cement pad is approximately five feet. The height of the pad is approximately two feet. Regarding the height of the cement accounts for the surrounding sand seasonally exposing and alternately burying the cement and associated cable to a depth of about ten feet. As such times within the space of a year that the cement would be exposed, it would sit upon the pre-existing pad as previously discussed.
3. The purpose of the cement in question is twofold. The cable runs up the beach and then disappears beneath the surface of the beach at the cable extremity. The cement cap serves to effectively seal this upper portion of the cable as the cable transitions from above to below the changing beach surface. Seasonal tidal activity requires that this portion of the cable be protected to the maximum extent feasible in that it is at this point were most the tidal scouring action occurs. The second function of the cement cap, in conjunction with its associated lower portion or pad, is to support and stabilize the cable proper, the cable sheath, and cement filled annulus. The absence of a cap at the upper extremity of the cable would negatively affect the ability of the upper extremity of the cable to maintain its integrity in the face of the seasonal tidal scouring action.
4. A MSDS sheet for the cement is attached as per your request.
5. Please refer to the attached "Least Environmentally Damaging Alternative Analysis" for a complete discussion of alternatives considered.

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CCC-03-CD-13 (PacOps)

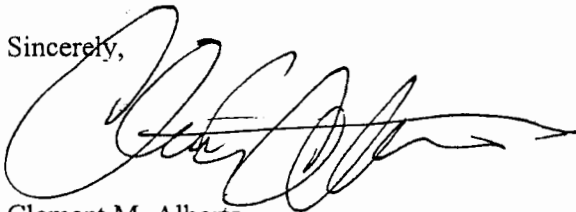
EXHIBIT 10

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6. Please find attached "Appendix B, Local Agency Review Form" from Carpinteria as per Ms. Cazorla's item one request as per her letter dated April 17<sup>th</sup>. I am sending this item to you directly as it is my understanding that you are attending to this matter in Ms. Carzola's absence.
7. Please find attached a copy of a letter as written to POOI by Mr. Pagenkopf in response to Ms. Cazorla's item two request as per her letter dated April 17<sup>th</sup>. I am sending this item to you directly as it is my understanding that you are attending to this matter in Ms. Carzola's absence.

With respect to the question of the cement cap's removal, as opposed to its being left in place, we offer the following for staff's consideration: The cable sheath and its cement cap are located few yards east of the Casitas pier and a few feet west of and large cement covered petroleum line on the other side. A few yards further to the east is located another large exposed petroleum line. The POOI power cable line is located in an area of tidal activity that excludes any kind of marine life from gaining a foothold. Staff is in possession of several photographs that describe the physical location and the immediate environmental setting within the immediate area adjacent to the cement cap. In light of the nature of the immediate surroundings, we feel that the cement cap presents a relatively minor redevelopment to a structure that has been in existence since 1968. Given the nature of the immediate surroundings, we cannot see how the cement cap could conceivably pose any threat to coastal resources or the environment. In contrast to allowing the cement cap to remain in place, we must look at the attendant consequences of its removal. A removal of the cap would necessarily create a disturbance. The cable and cement cap are at present partially buried by the sand that normally advances back up the beach at this time of the year. By all appearances, the cement cap and cable will again be totally buried under the sand within a relatively short order of time. POOI had to perform its cable repairs at annual time of the year that allowed for repair, i.e. at a time when the sand had been scoured off the beach by tidal activity. If a removal of the cap is required, its removal will necessarily coincide with the annual low sand level, i.e. during the annual adjacent seal colony pupping season. Moreover, a removal of the cement cap would also be accompanied by the installation of some other construction that would serve the identical purpose that the cap was intended to serve. For these reasons, we feel that a determination to allow the existing cement pad to remain in place represents the most reasonable and environmentally protective course of action available. In light of the foregoing, we seek your guidance and assistance in the gaining of a successful resolution of this matter. Please feel free to contact me should you wish to discuss this matter further.

Sincerely,



Clement M. Alberts  
Environmental Coordinator

Attachments

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cc: MC, OCL

**SECTION I—MATERIAL IDENTIFICATION AND USE**

MATERIAL NAME <b>PORTLAND CEMENT FOR CONCRETE AND MORTAR</b>			
MANUFACTURER'S NAME <b>CALAVERAS CEMENT COMPANY</b>		CHEMICAL NAME AND SYNONYMS <b>PORTLAND CEMENT (CAS #65997-15-1)</b>	
STREET ADDRESS			
CITY <b>MONOLITH</b>		STATE <b>CA</b>	ZIP <b>93548</b>
KERN COUNTY		TRADE NAME AND SYNONYMS	
			EMERGENCY TELEPHONE NUMBER <b>(805) 822-4445</b>

**SECTION II—CHEMICAL DATA**

**CHEMICAL FAMILY** CALCIUM SALTS

**FORMULA** PORTLAND CEMENT CONSISTS OF FINELY GROUND PORTLAND CEMENT CLINKER MIXED WITH A SMALL AMOUNT OF CALCIUM SULFATE TO CONTROL SET. PORTLAND CEMENT CLINKER IS A SINTERED MATERIAL PRODUCED BY HEATING TO HIGH TEMPERATURE (GREATER THAN 1200 DEGREES CELSIUS) A MIXTURE OF SUBSTANCES SUCH AS LIMESTONE AND SHALE FROM THE EARTH'S CRUST. THE SUBSTANCES MANUFACTURED ARE ESSENTIALLY HYDRAULIC CALCIUM SILICATES CONTAINED IN A CRYSTALLINE MASS, NOT SEPARABLE INTO THE INDIVIDUAL COMPONENTS.

CHEMICAL SUBSTANCES	CAS NUMBER	CHEMICAL SUBSTANCES	CAS NUMBER
3CaO·SiO <sub>2</sub>	12168-85-3	4CaO·Al <sub>2</sub> O <sub>3</sub> ·Fe <sub>2</sub> O <sub>3</sub>	12068-35-8
2CaO·SiO <sub>2</sub>	10034-77-2	CaSO <sub>4</sub> ·XH <sub>2</sub> O	13397-24-5
3CaO·Al <sub>2</sub> O <sub>3</sub>	12042-78-3		

SMALL AMOUNTS OF CaO, MgO, K<sub>2</sub>SO<sub>4</sub>, Na<sub>2</sub>SO<sub>4</sub> MAY ALSO BE PRESENT.

**SECTION III—HAZARDOUS INGREDIENTS**

**INGREDIENTS** PORTLAND CEMENTS ARE LISTED BY OSHA IN 29 CFR 1910.1000, TABLE Z-1-A, AND REQUIRE MATERIAL SAFETY DATA SHEETS (FR, JANUARY 19, 1989.) MSHA (30 CFR 55.5.-1, REF. 2, ACGIH TLV'S FOR 1973, APPENDIX E) AND ACGIH (TLV'S FOR 1984-5, APPENDIX D) LIST PORTLAND CEMENT AS NUISANCE DUSTS. PORTLAND CEMENTS ARE NOT LISTED BY NTP, IARC, OR OSHA AS CARCINOGENS. HOWEVER, SINCE PORTLAND CEMENT IS MANUFACTURED BY RAW MATERIALS MINED FROM THE EARTH (LIMESTONE, MARL, SAND, SHALE, CLAY, ETC.) AND PROCESS HEAT IS PROVIDED BY BURNING FOSSIL FUELS, TRACE, BUT DETECTABLE, AMOUNTS OF NATURALLY OCCURRING AND POSSIBLY HARMFUL, ELEMENTS MAY BE FOUND DURING CHEMICAL ANALYSIS. UNDER ASTM STANDARDS PORTLAND CEMENT MAY CONTAIN .75 PERCENT INSOLUBLE RESIDUE. A FRACTION OF THESE RESIDUES MAY BE FREE CRYSTALLINE SILICA.

**SECTION IV—PHYSICAL DATA**

<b>PHYSICAL APPEARANCE AND ODOR</b> GRAY OR WHITE POWDER; NO ODOR	<b>VAPOR PRESSURE</b> N/A POWDERED SOLID	<b>VAPOR DENSITY</b> N/A POWDERED SOLID
<b>EVAPORATION RATE</b> N/A POWDERED SOLID	<b>BOILING POINT</b> N/A POWDERED SOLID	<b>MELTING POINT</b> N/A POWDERED SOLID
<b>SOLUBILITY IN WATER</b> SLIGHT (0.1-1.0%)	<b>SPECIFIC GRAVITY</b> (H <sub>2</sub> O=1) 3.15	<b>pH (IN WATER)</b> 12.4

**SECTION V—FIRE AND EXPLOSION HAZARD DATA**

<b>FLAMMABLE OR EXPLOSIVE LIMITS</b> N/A	<b>EXTINGUISHING MEDIA</b> N/A	<b>SPECIAL FIREFIGHTING PROCEDURES</b> N/A
<b>FLASH POINT</b> NONCOMBUSTIBLE AND NOT EXPLOSIVE	<b>UPPER EXPLOSIVE LIMIT</b> N/A	<b>LOWER EXPLOSIVE LIMIT</b> N/A
<b>UNUSUAL FIRE AND EXPLOSION HAZARDS</b> NONE		

**SECTION VI—HEALTH HAZARD DATA**

<b>ACGIH THRESHOLD LIMIT VALUE (1988-1989)</b> TOTAL DUST CONTAINING NO ASBESTOS AND LESS THAN 1% SILICA — 10mg/m <sup>3</sup>
<b>OSHA PEL (TRANSITIONAL)</b> TOTAL DUST — 50 MILLION PARTICLE/ft <sup>3</sup>
<b>OSHA PEL (FINAL)</b> TOTAL DUST — 10mg/m <sup>3</sup> RESPIRABLE DUST — 5 mg/m <sup>3</sup>

**EFFECTS OF OVEREXPOSURE**

**ACUTE:** WET CEMENT, ESPECIALLY AS AN INGREDIENT IN PLASTIC (UNHARDENED) CONCRETE, MORTAR OR SLURRIES CAN DRY THE SKIN AND CAUSE CAUSTIC BURNS. DIRECT CONTACT WITH THE EYES CAN CAUSE IRRITATION. INHALATION CAN IRRITATE THE UPPER RESPIRATORY SYSTEM.

**CHRONIC:** CEMENT DUST CAN CAUSE INFLAMMATION OF THE LINING TISSUE OF THE INTERIOR OF THE NOSE AND INFLAMMATION OF THE CORNEA. HYPERSENSITIVE INDIVIDUALS MAY DEVELOP AN ALLERGIC DERMATITIS. CEMENT MAY CONTAIN TRACE (LESS THAN 0.05%) AMOUNTS OF CHROMIUM SALTS OR COMPOUNDS INCLUDING HEXAVALENT CHROMIUM OR OTHER METALS FOUND TO BE HAZARDOUS OR TOXIC IN SOME CHEMICAL FORMS. THESE METALS ARE MOSTLY PRESENT AS TRACE SUBSTITUTIONS WITHIN THE PRINCIPLE MINERALS.]

**EMERGENCY FIRST AID PROCEDURES**  
IRRIGATE EYES IMMEDIATELY AND REPEATEDLY WITH WATER (15 MINUTES MINIMUM) AND GET PROMPT MEDICAL ATTENTION. WASH EXPOSED SKIN AREAS WITH SOAP AND WATER. APPLY STERILE DRESSINGS. IF INGESTED, CONSULT PHYSICIAN IMMEDIATELY. DRINK WATER.

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**SECTION VII—REACTIVITY DATA**

STABILITY	HAZARDOUS DECOMPOSITION PRODUCTS	HAZARDOUS POLYMERIZATION
STABLE, KEEP DRY UNTIL USED	NONE	NON OCCURRING
COMPATIBILITY	ALUMINUM POWDER AND OTHER ALKALI AND ALKALINE EARTH ELEMENTS WILL REACT IN WET MORTAR OR CONCRETE, LIBERATING HYDROGEN GAS.	

**SECTION VIII—SPILL PROCEDURES**

STEPS TO BE TAKEN IN CASE MATERIAL IS SPILLED  
USE DRY CLEANUP METHODS THAT DO NOT DISPERSE THE DUST INTO THE AIR. AVOID BREATHING THE DUST. EMERGENCY PROCEDURES ARE NOT REQUIRED.

DISPOSAL METHOD  
SMALL AMOUNTS OF MATERIAL CAN BE DISPOSED OF AS COMMON WASTE OR RETURNED TO THE CONTAINER FOR LATER USE IF IT IS NOT CONTAMINATED. LARGE VOLUMES MAY REQUIRE SPECIAL HANDLING.

**SECTION IX—SPECIAL PROTECTION INFORMATION**

RESPIRATORY PROTECTION	IN DUSTY ENVIRONMENTS, THE USE OF A MSHA/NIOSH APPROVED RESPIRATOR IS RECOMMENDED
VENTILATION	LOCAL EXHAUST CAN BE USED TO CONTROL AIRBORNE DUST LEVELS.
EYE PROTECTION	USE TIGHT FITTING GOGGLES IN DUSTY ENVIRONMENTS.
SKIN PROTECTION	USE BARRIER CREAMS, IMPERVIOUS, ABRASION- AND ALKALI-RESISTANT GLOVES, BOOTS AND PROTECTIVE CLOTHING TO PROTECT THE SKIN FROM PROLONGED CONTACT WITH WET CEMENT IN PLASTIC CONCRETE, MORTAR OR SLURRIES. IMMEDIATELY AFTER WORKING WITH CEMENT OR CEMENT-CONTAINING MATERIALS, WORKERS SHOULD SHOWER WITH SOAP AND WATER. PRECAUTIONS MUST BE TAKEN. CEMENT BURNS WITH LITTLE WARNING — LITTLE HEAT IS SENSED.

**SECTION X—ABBREVIATIONS**

ACGIH	AMERICAN CONFERENCE OF GOVERNMENTAL INDUSTRIAL HYGIENISTS
ASTM	AMERICAN SOCIETY FOR TESTING AND MATERIALS
CAS	CHEMICAL ABSTRACT SERVICE
CFR	CODE OF FEDERAL REGULATIONS
ft <sup>3</sup>	CUBIC FOOT
IARC	INTERNATIONAL AGENCY FOR RESEARCH ON CANCER
m <sup>3</sup>	CUBIC METER
mg	MILLIGRAM
MSHA	MINE SAFETY AND HEALTH ADMINISTRATION
NIOSH	NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH
NTP	NATIONAL TOXICOLOGY PROGRAM
OSHA	OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
PEL	PERMISSIBLE EXPOSURE LIMIT
TLV'S	THRESHOLD LIMIT VALUES

PREPARED BY	PHONE NUMBER	DATE
PCA/CBR TECHNICAL SERVICES — C. TRUSTY	(415) 256-8837	NOVEMBER 20, 1989

Note: This material safety data sheet attempts to describe as accurately as possible the potential exposures associated with normal cement use. Health and safety precautions in this data sheet may not be adequate for all individuals and/or situations. Users have the responsibility to evaluate and use this product safely and to comply with all applicable laws and regulations. No representations or warranties with respect to the accuracy or correctness of this information, or of any kind or nature whatsoever are given, made or intended by CBR. CBR assumes no legal responsibility whatsoever for this information, or for any injuries or damages, however caused which may result from the use of this information. This information is offered solely for informational purposes and is subject to your own independent investigation and verification.

Pursuant to the provisions of the California Health and Safety Code General Warning: PORTLAND CEMENT MAY CONTAIN TRACE AMOUNTS OF CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER, BIRTH DEFECTS, OR REPRODUCTIVE HARM.

5

## Least Environmentally Damaging Alternative Analysis

The first obvious alternative would be to shut off the electrical power to the cable. Shutting off electrical power to the two OCS platforms supplied by this cable would have resulted in a complete cessation of platform operational activity. The two platforms are equipped with emergency electrical generators designed to provide the facilities with essential power. These generators do not however provide sufficient energy to conduct normal platform operations. Moreover, the presence and operation of emergency electrical generators are regulated activities within the County of Santa Barbara by the Santa Barbara County Air Pollution Control District (SBCAPCD). Under SBCAPCD regulations, POOI is only permitted to operate its emergency electrical generators for a maximum of 200 hour per calendar year. SBAPCD regulations provide that a variance from a permit condition may be applied for that, if granted, would provide relief from the permit limitation. However, as pointed out previously, operation of the platforms by emergency power alone is not sufficient to maintain normal operations. Normal operations include the production of crude oil and natural gas from wells located on the two POOI platforms. It is imperative to understand that the nature of the producing wells is such that they must be produced from constantly to avoid their being filled with sand. In the event that a well becomes filled with sand, the well ceases to be producible. It becomes necessary to rework the well in order to bring it back into production. Were both platforms to be shut down for more than 24 hours, a complete re-working of as much as 60% of all currently producing wells would become necessary. Where this to occur, the associated incurred costs of re-working the adversely affected wells combined with the loss of concurrent production revenue would effectively destroy POOI's ability to continue operating these platforms. In other words, an interruption of electrical power to the platforms for any significant length of time would be unsustainable. POOI therefore feels that this approach is not feasible.

An alternative analysis must consider environmental, economic and regulatory prohibitions. Issues of company operational safety policy and regulatory agency safety oversight must also be considered. POOI must pay heed to safety issues deemed not only sensitive to itself as a responsible company, but to State and Federal agencies also possessing legislated operational oversight responsibilities. These considerations serve to effectively prohibit the type of operational shut down that would result from an electrical shut down.

In absence of a scenario that would allow us to just shut off power, we are left to explore whatever remaining possible alternative scenarios are left open to us. The first and most obvious actual cable repair scenario is the do-nothing approach in regard to the upper surface to subsurface portion of the cable. In this case the upper portion of the protective cable sheath would have been left exposed to the elements during those periods of the year wherein tidal activity scours the beach as previously discussed. This would in turn lead to an eventual breach of integrity of that portion of the cable sheath that resides at the upper most position on the beach. Erosion induced failure of the cable sheath and

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annulus at that point would in turn lead to an inevitable failure of the electrically conducting portion of the power cable proper.

Another alternative scenario to the cement cap approach that was considered was the purposed excavation of a trench at a point extending from the surf line and extending up back up the beach. The purpose of trench would be to lower the cable to beneath that level which represented the lowest annual sand level. This approach would have necessitated the lowering machinery onto the beach with an associated excavation and disruption of a much larger area of the beach. POOI concluded that this was not a viable alternative in that it did not represent the least intrusive, i.e. least environmentally damaging alternative.

The final scenario considered, and the least invasive alternative course of action ultimately adopted, was to repair the cable terminus in place by re-constructing cement cap that previously covered the cable terminus. Our analysis concluded that repair of the cement cap by minimal re-construction was the most straightforward and least environmentally invasive method by which this essential repair could have possibly been made.

E-03-002

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APPENDIX B

LOCAL AGENCY REVIEW FORM

CALIFORNIA COASTAL COMMISSION

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant Pacific Operators Offshore, LLC 205 E. Carrillo St., Suite 200 Santa Barbara CA 93101

Project Description Pacific Operators Offshore Emergency Power Cable Repair

Location Approx 100ft east of Casitas Pass Pier/on beach; Carpinteria, Calif.

Assessor's Parcel Number NA

5/19/2003 N/A

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation N/A du/ac

General or Community Plan Designation N/A du/ac

Local Discretionary Approvals

- Proposed development meets all zoning requirements and needs no local permits other than building permits.
- Proposed development needs local discretionary approvals noted below.

Needed Received

- Design/Architectural review
- Variance for \_\_\_\_\_
- Rezone from \_\_\_\_\_
- Tentative Subdivision/Parcel Map No. \_\_\_\_\_
- Grading/Land Development Permit No. \_\_\_\_\_
- Planned Residential/Commercial Development Approval
- Site Plan Review
- Condominium Conversion Permit
- Conditional, Special, or Major Use Permit No. \_\_\_\_\_
- Other Carpinteria City Business License required,

CEQA Status

- Categorically Exempt Class N/A Item \_\_\_\_\_
- Negative Declaration Granted (Date) \_\_\_\_\_
- Environmental Impact Report Required, Final Report Certified (Date) \_\_\_\_\_
- Other \_\_\_\_\_

Prepared for the City/County of Carpinteria by Paul Hermann

Date 4/15/03 Title Community Development Director

RECEIVED

APR 04 2003

CITY OF CARPINTERIA



**Daniel C. Pagenkopf**  
**406 Washington Avenue, Suite C**  
**Richmond, California 94801**  
**805.452.3814**

April 23, 2003

Mr. Clement M. Alberts, Environmental Coordinator  
Pacific Operators Offshore, Inc.  
205 E. Carrillo St., Suite 200  
Santa Barbara CA 93101

Re: Emergency Power Cable Repair, Casita Pass Pier, Carpinteria  
California Coastal Commission Letter of Inquiry dated April 17, 2003

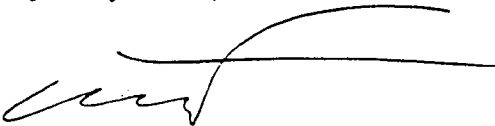
Dear Mr. Alberts,

In reference to the above-indicated letter, I observed no disturbance to adjacent harbor seal colony that could be directly attributed to your project activities. As you are aware, there were many disturbances. I specifically logged several non-project related disturbances, e.g. multiple joggers, a Clean Seas work truck back-up alarm on the pier, and a "shot like" sound that came from the west. To reiterate, none of these disturbances could be attributed to POOI cable project related activity.

I submitted a true notarized copy of my biological monitoring logs, via certified mail on February 3, 2003, to Mr. Tom Luster of the California Coastal Commission and to Ms. Tina Fahy (NMFS).

Please feel free to contact me if you have any other questions.

Very Truly Yours,



Daniel C. Pagenkopf  
Biological Monitor

## CALIFORNIA COASTAL COMMISSION

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

**SENT BY CERTIFIED MAIL****No. 7002 2410 0001 3758 1612**

May 22, 2003

Clement M. Alberts  
Pacific Operators Offshore, LLC  
205 Carrillo Street, Suite 200  
Santa Barbara, CA 93101

RE: **Alleged Coastal Act Violation No. V-7-03-001** (Pacific Operators Offshore, LLC),  
consisting of the unpermitted pumping of cement at the terminus of an existing power  
cable located on the shoreline and in the nearshore area approximately 70 feet east of  
Casitas Pier in Carpinteria, Santa Barbara County

Dear Mr. Alberts:

I am writing again concerning the above-referenced alleged Coastal Act violation by Pacific Operators Offshore, LLC, consisting of the unpermitted pumping of cement around a recently repaired power cable, to construct a cement pad and covering at the upper end of the cable sheath (at the cable terminus) near Casitas Pier. As I have noted in my previous letters of April 10, 2003 and April 17, 2003, a coastal permit is required for the unpermitted construction of the cement pad and cap, even if it is considered to be "repair and maintenance" of the existing cement structure, pursuant to Section 13252(a)(3) of the Commission's Administrative Regulations. Further, **Emergency Permit No. E-03-001-G** temporarily authorized repair work to the power cable, but did not authorize the pouring of cement for a pad and/or cap for the cable; thus this unpermitted activity constitutes a deviation from the specified operations in the emergency permit application approved by the Executive Director and is therefore a violation of the terms and conditions of the emergency permit, and of the Coastal Act.

In my previous letter dated April 10, 2003, I requested that you submit information about the cement construction. We received this information with your submittal dated April 25, 2003. In this submittal, you indicate that you wish the cement cap and pad to remain in place.

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I have discussed at length the matter of the unpermitted cement with Alison Dettmer and Marina Cazorla of our Energy and Ocean Resources Division, as well as with Lesley Ewing, our engineer, and Derek Lee of our Water Quality unit. It is staff's conclusion that it appears that the cement was essentially poured directly onto the beach, without being properly cured, engineered, or installed. Wet cement is known to have adverse effects on organisms, as uncured cement has a significantly higher PH (more basic) than sea water, making the surface of uncured concrete toxic to invertebrate organisms for as long as 12 months. It is staff's further conclusion that the cement is already being broken up by surf and wave action, and does not appear to be providing viable protection for the cable line. Staff believes that the cement can be removed without jeopardizing the stability of the line, as it is adding weight to the line and increasing the drag area, and it is likely that the cement can be removed manually and will not require the use of any mechanized equipment on the beach.

As we have mentioned previously, the construction of an unengineered cement pad and/or cap in the surf zone is an activity that appears to be inconsistent with Section 30233 of the Coastal Act, which allows filling of open coastal waters only for certain limited uses, and only where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. Based on the information currently available, it is our staff's conclusion that the cement cap and pad were not properly engineered, may have the potential to cause a premature failure of the cable, and may have adverse environmental impacts on marine organisms. Coastal Commission staff therefore cannot conclude that there is no feasible less environmentally damaging alternative, and thus our staff would not find the placement of the cement to be consistent with Section 30233 of the Coastal Act and would not recommend to the Commission approval of its retention.

As we have previously indicated, it is our strong recommendation that the best way to resolve the outstanding Coastal Act violation that consists of the unpermitted construction of a cement pad and/or cap at the terminus of the cable would be to amend **Coastal Permit Application No. E-03-002** to include removal of the cement pad and cap. The permit application can also be amended to include a proposal for a properly engineered method of stabilizing the power cable that can be demonstrated to be the least environmentally damaging alternative and that is consistent with Coastal Act policies. You may instead choose to submit a separate coastal permit application with such a proposal.

Please indicate in writing by May 30, 2003 how you propose to resolve the outstanding Coastal Act violation. If you decide, as we strongly recommend, to amend your current coastal permit application to include removal of the cement pad and cap, please amend the project description of **CDP Application No. E-03-002** by June 6, 2003 to include the proposed removal of the cement pad and cap, and submit appropriate materials describing method of removal, date of removal, duration of construction activities, water quality protection measures, and disposal location for removed cement.

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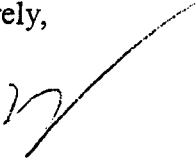
CLEMENT ALBERTS

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Please note that if you do not respond as directed, the Commission will initiate formal proceedings to issue a Restoration Order, ordering removal of the cement pad and cap, and restoration of the disturbed area.

If you have any additional questions about enforcement, you may contact me at (415) 904-5269. If you have questions about amending your coastal permit application, please contact Marina Cazorla at (415) 904-5249. Thank you for your cooperation.

Sincerely,



JO GINSBERG  
Enforcement Analyst

cc: Marina Cazorla, Energy and Ocean Resources  
Alison Dettmer, Manager, Energy and Ocean Resources

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## PACIFIC OPERATORS OFFSHORE, LLC

205 E. CARRILLO STREET, SUITE 200  
SANTA BARBARA, CALIFORNIA 93101  
PHONE 805 899-3144 • FAX 805 899-3166

June 13, 2003

CALIFORNIA COASTAL COMMISSION  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Attn: Jo Ginsberg, Enforcement Analyst

**Re: Alleged Coastal Act Violation No. V-7-03-001**

Dear Ms. Ginsberg:

This is in response to your May 22 letter. We respectfully request your reconsideration of the recommendation that Pacific Operators Offshore, LLC (POO) apply to remove the cement cap in question. In reviewing the rationale for your recommendation, it is apparent that it is based upon erroneous facts.

Your staff concludes that POO's use of uncured cement of a presumably higher PH is toxic to invertebrates. However, the Wildlife Protection Plan required by staff for approval of the cable casing repair concluded that the project site is devoid of any intertidal flora or fauna. Mr. Peter Howorth, a respected independent marine biologist, explained that the area of concern is entirely within the intertidal zone, and that it is subject to periods of high turbidity and continued abrasive wave action, which effectively inhibit the formation of any life. Section 3.2.3 of Mr. Howorth's plan describes the project site as follows:

Nothing grows on the rocks where the cable runs through the intertidal zone because the area is subject to constant surf and the rocks are often buried under as much as six feet of sand. The white abalone (*Haliotis sornsen*), the only endangered marine mollusk found in the SCB, is a deepwater species never found in the intertidal region.

Sand movement at the project site is incessant, so no organisms have become permanently established in the sand. The amount of sand present is not sufficient to provide spawning grounds for California grunion (*Leuresthes tenuis*). Moreover, the adjacent rock outcrops and pier pilings do not provide satisfactory habitat for grunion. The seabed offshore in the immediate area consists of patches of sand alternating with rock outcrops. No eelgrass is present in the area. The nearest giant kelp (*Macrocystis pyrifera*) consists of a few small patches approximately 400 meters from the project site. No impacts will occur to marine flora and fauna because the project site is devoid of any intertidal flora and fauna.

It is also fair to conclude that the cement in question is now cured in any event by reason of the passage of time and exposure to the elements. In short, we believe that your concerns concerning elevated PH levels are not well founded.

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We also disagree with your staff's conclusion that the cement cap is breaking up as a result of wave action and that the cap is not providing adequate protection for the cable. We do not know the source of your staff's information in this regard, but it is in error. In fact, the cement was not poured directly onto the beach, it is not in the process of failing, nor does it present a threat to stability of the cable. We believe that an inspection of the site would readily confirm these facts.

The previous condition of the cable terminus area did indeed represent a threat to stability of the cable. Over the years, the support structure became partially destroyed, leaving the cable resting on remnants of grout bags positioned on solid rock substrate. The vast majority of the cement recently poured merely replaced the old bags. While the total volume of cement poured may exceed the original volume occupied by the grout bags, POO believes that the entire project does not represent an increase above ten percent of the original bulk. The replacement structure is for the same use as the destroyed structure, and is sited in the same location as the structure that was destroyed by wave action, i.e. destroyed by forces beyond POO's control.

The level of sand on the beach varies throughout the year, i.e. at certain times of the year the cable and cable terminus are either fully exposed or completely buried by seasonal variations of tidal activity. Tidal activity scours and deposits sand on the beach and inhibits the formation of life. At certain times throughout the year, the cable and its terminus are covered by as much as five to six feet of sand, while at other times the relative absence of sand could lead the uninformed observer to conclude that the cable terminus is being undermined.

While a certain degree of minor erosion may take place initially, any removal of the cap would greatly destabilize the cable terminus and likely result in inherently dangerous circumstances similar to those that necessitated the emergency repairs in the first place. We see no evidence whatsoever that the new structure will not adequately protect the integrity of the cable for many years.

We agree that the facts of this matter are essential for a proper resolution. We encourage qualified staff members to personally visit the site with us to make a first-hand assessment of the environmental setting and physical features of the structure in question. If this can occur, POO believes that the parties are more likely to develop a consensus on the appropriate way to resolve the matter. Please let us know if staff is willing to visit the site in the near future. In the meantime, if you have any questions or need further information, please contact me.

Sincerely,



Clement M. Alberts  
Environment Coordinator

Cc: Mr. Steve Kirby  
Mr. Robert Carone  
Mr. Bruce Johnston

Item: Correspondence 6/13/03

CCC-03-CD-13 (PacOps)

EXHIBIT 12

Page 2 of 2

# CITY of CARPINTERIA, CALIFORNIA



RECEIVED

JUL 11 2003

CALIFORNIA  
COASTAL COMMISSION

July 1, 2003

Ms. Marina Cazorla  
California Coastal Commission  
45 Fremont Suite 2000  
San Francisco, CA 94105-2219

Members of the City Council  
Richard Weinberg - Mayor  
Donna Jordan - Vice-Mayor  
Michael Ledbetter  
J. Bradley Stein  
Gregory Gandrud

Dear Ms. Cazorla,

The City of Carpinteria (City) has visited the site of the repair work on an electrical cable operated by the Pacific Operators Offshore, LLC. (POO). This cable is on public tidal and submerged property under the jurisdiction of the City of Carpinteria who is the lessor of said property. The City understands that a portion of the repairs was allowed under the conditions of an emergency permit (E-03-001-G) granted by the California Coastal Commission. The City further understands that the upland most portion of the repair work was not discussed or permitted under the provisions of the Emergency permit listed above.

The upland portion of the repair installation appears to be a free form concrete pour consisting of an estimated one or two cubic yards of concrete. The City has not been provided with any evidence that this free form concrete pour over the electrical cable provides any benefit to the cable. In fact, during a site visit in the spring of this year, the concrete appeared to be undermined and providing no benefit to the cable. The City is concerned that the free form concrete pour may contribute unintended consequences of an unknown nature to an area already heavily impacted by coastal dependent industrial uses.

In the absence of evidence of any benefit, it is the City's preference that the concrete be removed as soon as practical. Should POO provide detailed plans prepared by a registered engineer with the appropriate license that demonstrates the benefit of the concrete or other compelling evidence, the City would reconsider its position.

I appreciate the opportunity to comment on this matter

Respectfully,

Matthew Roberts  
Director, Parks and Recreation

Item: Correspondence 7/01/03

CCC-03-CD-13 (PacOps)

EXHIBIT 13

Page 1 of 1

[mcazorla@coastal.ca.gov](mailto:mcazorla@coastal.ca.gov)

Subject: Pacific Operators Offshore  
Alleged Coastal Act Violation No. V-7-03-001

Dear Ms. Cazorla:

As we discussed yesterday morning, my client Pacific Operators requests a meeting to discuss this matter with Coastal staff and City of Carpinteria officials. Pacific Operators will make available its licensed structural engineer, Rick Beers, and asks that your staff engineer be available as well. Simon Poulter of Padre Associates will also be on hand. We prefer to meet in person to provide staff with the opportunity to visit the site. If this is not possible, we suggest a teleconference.

The purpose of the meeting is to seek agreement on an appropriate solution for the alleged Coastal Act violation. We understand that your staff's primary concern is with respect to the structural integrity of the cement cap. Apparently, some believe that the cap was not properly engineered and therefore not adequate to support the electrical power cable. Pacific Operators believes otherwise and would like to share its reasons for this and for the belief that coastal resources are better protected by maintaining the existing structure. I am certain that you would agree that any such resolution ought to be based upon sound engineering and environmental considerations.

We believe that the meeting should take place soon. Such a dialogue would be useful, at least to ensure that all parties are operating on the same set of facts and, hopefully, will result in a mutually acceptable solution. Since the City of Carpinteria has raised related issues, perhaps all pending matters could be resolved at the same time. This is my client's goal.

I also raised with you the applicability of the CDP exemption in Coastal Act 30610(g). It is my understanding that Pacific Operators' replacement work was required because the existing structure was destroyed by a disaster as defined by the statute; that is to say by any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner. Subsection (g)(2)(A). The wave and tidal forces that destroyed the existing structure were beyond the control of Pacific Operators. I also understand that the bulk of the new work completed does not exceed the bulk of that which was destroyed by more than 10%. The new structure is sited in the same location as the destroyed structure and is used for the same purpose. Based upon these facts, in our view the entire project is exempt from the need for a permit. See *City of Monterey v. California Coastal Commission* (1981) 120 Cal.App.3d 799, 805-807.

Please let us know whether staff is willing to participate in such a meeting during the week of July 28. Thank you.

Item: Email Correspondence 7/25/03

CCC-03-CD-13 (PacOps)

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[PACIFIC OPERATORS LETTERHEAD]  
**PACIFIC OPERATORS OFFSHORE**

205 E. CARRILLO STREET, SUITE 200  
SANTA BARBARA, CALIFORNIA 93101  
PHONE 805 899-3144 • FAX 805 899-3166

PT 432

August 19, 2003

**FEDERAL EXPRESS**

Ms. Jo Ginsberg  
Enforcement Analyst  
CALIFORNIA COASTAL COMMISSION  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

Re: **Alleged Coastal Act Violation No. V-7-03-001**

Dear Ms. Ginsberg:

We submit the following information in response to the issues raised in your August 1, 2003 letter:

In searching through our archival records we found Phillips Petroleum Company's "As Built Drawing" depicting how the cable was originally constructed at the beach crossing in 1968. (See upper left hand corner of attached drawing.)

As shown on the drawing, Phillips covered the entire sheath lying within the surf zone with a protective layer of cement similar to that used on the adjacent Chevron (now Venoco) pipeline. (See photo exhibits.) Phillips also constructed two concrete support piers. Phillips' original design lasted for more than 30 years. The structural replacement work completed in January 2003 is "like for like", consistent with

Item: Correspondence 8/19/03

CCC-03-CD-13 (PacOps)

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Ms. Jo Ginsberg  
August 19, 2003  
Page 2 of 4

Phillips' original design, is for the same use at the same location, and is expected to last for the remaining life of the project.

**1. Clarification and documentation as to size, nature and location of destroyed structure.**

Please see "As Built Drawing".

**2. Documented evidence that the new cement cap is for the same use as the destroyed structure, is no more than 10% greater in size than the destroyed structure, is sited in the same location as the destroyed structure, and conforms to applicable existing zoning requirements.**

Please see "As Built Drawing". Based upon the notes on this drawing, the volume of cement used in Phillips' original construction was approximately eight cubic yards. (Note that the distance from the last pier to the water is not given. However, we can assume that Phillips would attempt to cover as much of the surf zone as possible. Therefore we used a mean low tide distance of approximately 70 feet from toe of cliff). In comparison, Pacific Operators used a total of approximately ten cubic yards of cement in the January 2003 replacement work. However, three cubic yards were pumped inside the 12" pipe, leaving only

Ms. Jo Ginsberg  
August 19, 2003  
Page 3 of 4

approximately seven cubic yards used for the cover. Thus, the total size of the new cement cover is actually somewhat smaller than that which it replaced. Regarding the area of concern, that is, the cap near the toe of the cliff, it was placed on top of the Phillips pier and therefore does not exceed original footprint.

There are to our knowledge no existing zoning requirements .

**3. Documented evidence that the destroyed structure was a legal, permitted structure.**

The destroyed structure was constructed before adoption of the California Coastal Act under Santa Barbara County authority. See attached 1968 Lease Agreement between Santa Barbara County and Phillips Petroleum. The County most recently renewed this lease for an additional five year term in December of 2002. See attached.

**4. Documented evidence that the destroyed structure was actually destroyed by a disaster.**

See attached photo of cable area taken prior to the January 2003 replacement work. This photograph shows that the metal sheath and cement cover

Ms. Jo Ginsberg  
August 19, 2003  
Page 4 of 4

had broken away, i.e. were destroyed such that these materials could not be recovered, reassembled or reused. Replacement was the only practicable option.

This conclusion is, in part, supported by the Commission's issuance of the Emergency Permit for replacement of the cable sheath.

The original structure was destroyed by wave and tidal forces which were entirely beyond the control of the owner. It appears to us that these circumstances qualify as destruction by "disaster" under Pub. Res. Code §30610(g)(2)(A) so as to exempt all of the replacement work from the need for a Coastal Development Permit.

The foregoing is confined to the issues raised in your August 1 letter and does not address the relative merits of leaving the replacement structure in place versus removing it and constructing a different one. We remain prepared to discuss this matter with you as well at any time. If we can provide you with any further information, please contact me directly.

Sincerely,



## CALIFORNIA COASTAL COMMISSION

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

Item: NOI 9/10/03

CCC-03-CD-13 (PacOps)

EXHIBIT 16

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VIA CERTIFIED and REGULAR MAIL  
No. 7002 2410 0001 3758 1643

September 10, 2003

Rob Carone, Vice President  
Pacifica Operators Offshore, LLC  
205 Carillo Street, Suite 200  
Santa Barbara, CA 93101

Subject: **Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings**

Violation No.: V-7-03-001

Location: On the beach and in surf zone areas near the Casitas Pier, offshore the City of Carpinteria, Santa Barbara County

Violation Description: Unpermitted pumping of cement at the terminus of an existing power cable, to construct a concrete "cap" over the cable terminus.

Dear Mr. Carone:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The development, which for reasons set forth herein was and continues to be subject to the permit requirements of the Coastal Act (Public Resources Code Section 30600), consists of the pumping of cement onto the beach and in open coastal waters at the terminus of an existing, recently repaired power cable, for the purpose of constructing an unformed concrete "cap" over the cable terminus, without the required coastal development permit. This unpermitted development is located on the beach and in surf zone areas near the Casitas Pier, offshore the City of Carpinteria, Santa

Barbara County ("subject property"). The subject property is under the jurisdiction of the City of Carpinteria and leased to Pacific Operators Offshore, LLC (hereinafter referred to as "POOI").

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from maintaining any unpermitted development and will compel the removal of unpermitted development and restoration of the areas impacted by the unpermitted development. The Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

The specific location of the unpermitted development is on Casitas Beach and in the surf zone about 70 feet east of the Casitas Pier in Carpinteria. The site of the unpermitted cement cap is immediately adjacent to a Pacific harbor seal pupping and haul-out area. Site visits by City of Carpinteria staff have indicated that the unpermitted cement "cap" appears to be in the process of disintegrating, thus creating a public safety hazard, as well as a hazard to the nearby harbor seal colony, as the remaining cement will have sharp edges as it erodes. In addition, if the cap continues to disintegrate, pieces of cement will enter the ocean, an environmentally sensitive habitat area. The uncured cement may leach into the ocean, and with its significantly higher PH (more basic) than saltwater, have adverse environmental effects on marine organisms. Therefore, not only is the development unpermitted, the development may be causing ongoing adverse resource impacts to an environmentally sensitive habitat area and to the protected Pacific harbor seals that live, breed, and pup nearby.

### **Chronology of the Violation**

On May 8, 1998, the Executive Director issued to POOI **Emergency Permit No. E-98-07-G** for repair of 90 feet of the damaged and exposed 16,000-volt power cable at the subject site that supplies electricity to offshore oil platforms *Hogan* and *Houchin*. The repair work was completed on May 15 and 16, 1998. Steel was used to repair the metal sleeve for the cable. On October 9, 1998, the Commission issued a Coastal Permit Waiver for the follow-up permit application for repair of the electrical cable sheath due to damage caused by erosion and tidal activity, including replacement of sections of aluminum casing and pumping of cement into the annulus created by the replacement aluminum casing.

During the winter of 2000/2001, strong storm and wave action removed sand from the area, exposing approximately 50 feet of the cable and removing approximately 40 feet of the cable's metal sleeve. According to POOI, the loss of the sleeve increased the risk that the electrical cable could short out and the possibility that the cable could loosen or break and damage the adjacent oil and gas pipelines owned by Venoco, Inc. Thus, in a letter from Mr. Clement Alberts dated March 27, 2001, POOI requested another emergency coastal development permit to replace the lost metal sleeve. POOI subsequently withdrew its request on April 20, 2001, stating

that higher levels of sand had returned to the beach and buried the cable, reducing the immediate risk of cable failure, and making the immediate replacement of the lost metal sleeve unnecessary.

However, in January of 2003, POOI noted that the electrical cable had once again become exposed. In a letter dated January 9, 2003, Mr. Alberts explained that the metal sleeve and protective concrete coating had worn away along approximately 80 feet of cable, exposing several portions of bare electrical wire. Mr. Alberts asserted that if an object were to come into contact with those portions of the cable, the cable would short out and likely cause an explosion, possibly damage nearby pipelines, and possibly electrocute the harbor seals inhabiting the nearby seal colony. POOI thus once again requested from the Executive Director an emergency permit to replace lost sections of the metal sleeve with thicker metal sleeves and replace the coating material.

On January 28, 2003, the Coastal Commission issued **Emergency Permit No. E-03-001-G**, authorizing repair of the metal sleeves and casing of the exposed 80-foot section of the power cable. The emergency permit authorized the pumping of cement only into the annulus between the 12-inch sleeve and the five-inch plastic cover. The applicant did not request and the emergency permit did not grant authorization to pump cement onto the beach at the terminus of the cable to create a cement "cap." Special Condition No. 3 of the emergency permit specifically requires that the applicant shall not deviate from the operations, timing or sequence of operations specified in the application unless and until authorized by the Executive Director. Special Condition No. 5 states that work done pursuant to the emergency permit shall be limited to the measures needed to eliminate the immediate danger caused by the exposed electrical cable, and that repair or maintenance work not needed to eliminate the immediate danger is not authorized by the emergency permit. The work was performed on January 27-30, 2003, over a period of three days. During this time, in addition to the work authorized by the emergency permit, POOI also performed unpermitted development in the form of pumping of cement onto the beach at the terminus of the cable, creating a cement cap, in violation of Special Condition No. 3 and Condition No. 5 of **Emergency Permit No. E-03-001-G**, and, thus, of the Coastal Act.

In addition, Special Condition No. 4 of the emergency permit requires that within 45 days of issuance of the permit (by March 14, 2003), the applicant shall submit to the Coastal Commission a regular coastal development permit application to authorize the activities approved by the emergency permit. The application was not submitted until April 29, 2003, which was 46 days late, constituting a violation of Special Condition No. 4 of the emergency permit, and, thus, of the Coastal Act.

POOI's follow-up coastal permit application sought to make permanent the repairs temporarily authorized by **Emergency Permit No. E-03-001-G**. That work included: staging equipment and supplies on a paved parking lot above the beach, moving equipment onto the beach, removing loose or damaged sections of the cable coverings, replacing the metal sleeves, pumping cement into the annulus between the cable and the new sleeves, and removal of materials and debris from the beach upon completion of work. The project description did not include a request to

create a cement cap on the beach. POOI's follow-up coastal permit application, No. E-03-002, is pending and is scheduled for a Commission hearing on September 11, 2003.

Commission staff first learned of the alleged violation on the subject property shortly after the work authorized by the emergency permit was completed. A member of the public informed Commission staff that cement had been pumped for approximately ten minutes into a large hole that had been dug into the sand on the beach. The cement covered not just the end of the pipe but also several sections of the new sleeve. The pumping of cement on the beach and around the terminus of the cable was unpermitted development not authorized by the emergency permit. As noted above, the emergency permit authorized the pumping of cement *only* into the annulus of the cable.

On April 10, 2003 Commission staff sent to Mr. Alberts a "Notice of Violation" letter regarding the unpermitted development on the subject property. The letter explained that under the Coastal Act the placement of a cement cap constitutes development that is subject to the permit requirements of the Act, and that the failure to obtain a permit for such development constitutes a Coastal Act violation. The letter further stated that POOI would need to either apply for a CDP to remove the unpermitted development and restore the subject property to its pre-development condition, or apply for an after-the-fact CDP to authorize the unpermitted development. The letter also stated that it is not clear whether the unpermitted development is approvable under Coastal Act Section 30233, which states that filling of open coastal waters shall be permitted only where there is no feasible less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and only for certain uses. The letter requested additional information to enable staff to determine whether the unpermitted work is allowable under Coastal Act Section 30233.

In a letter to Mr. Alberts dated April 17, 2003, Jo Ginsberg of our Enforcement Unit extended the deadline for response to the April 10<sup>th</sup> violation letter from April 18, 2003 to April 28, 2003. In this letter, Commission staff responded to Mr. Albert's assertion in an April 16, 2003 email to Marina Cazorla of the Commission's Energy and Ocean Resources Unit that the construction of the cement cap constitutes repair and maintenance of an existing structure, and thus, does not require a coastal permit. Commission staff pointed out that even if the construction of the cement cap could be considered to be "repair and maintenance" of an existing cement structure, it nevertheless requires a coastal development permit, pursuant to Coastal Act Section 13252(a)(3) of the Commission's *Administrative Regulations*. This section of the regulations states that a coastal permit is required for any repair and maintenance to structures located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters that include the placement of solid materials and/or the presence, whether temporary or permanent, or mechanized equipment or construction materials.

In the April 17, 2003 letter, staff also pointed out that **Emergency Permit No. E-03-001-G**, which temporarily authorized repair work to an 80-foot section of power cable whose metal



sleeve and protective inner coating had worn away, did not authorize the additional pouring of cement onto the cable surface and onto the beach for a cap for the cable terminus, and that Condition No. 3 of the emergency permit specifically states that "The applicant shall not deviate from the operations, timing, or sequence of operations specified in the application unless and until authorized by the Executive Director."

This letter reiterated Commission staff's earlier assertion in the letter of April 10, 2003 that the construction of an unengineered cement cap in the surf zone is an activity that appears to be inconsistent with Coastal Act Section 30233, which allows filling of open coastal waters only for certain limited uses, and only where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. Staff stated that it appears that the cement cap was not properly engineered (if at all) and may have the potential to cause a premature failure of the cable; thus, staff could not conclude that there is no feasible less environmentally damaging alternative, and would likely not conclude that this activity is consistent with the Coastal Act. Staff recommended that the currently pending **Coastal Permit Application E-03-002** (follow-up CDP application required by **Emergency Permit No. E-03-001-G**) be amended to include removal of the cement cap, and suggested that the permit application could also be amended to include a new proposal for a properly engineered method of stabilizing the power cable that could be demonstrated to be the least environmentally damaging alternative and that is consistent with Coastal Act policies.

Additional correspondence between Mr. Alberts and Commission staff includes a letter dated April 25, 2003 from Mr. Alberts, in which he expressed POOI's desire that the cement cap remain in place, and a response from staff dated May 22, 2003, in which staff reiterated that a coastal permit is required for the unpermitted cement cap to remain in place, even if it is considered to be "repair and maintenance" of the existing cement structure, pursuant to Section 13252(a)(3) of the Commission's *Administrative Regulations*.

In the May 22, 2003 letter, Commission staff further stated that it is staff's conclusion, after discussions with the Commission's staff engineer and Water Quality Unit personnel, that it appears that the cement was poured directly onto the beach, without being properly cured, engineered, or installed. Wet cement is known to have adverse effects on organisms, as uncured cement has a significantly higher PH (more basic) than sea water, making the surface of uncured concrete toxic to invertebrate organisms for as long as 12 months. Based on conversations with City of Carpinteria staff, Commission staff further noted that the cement is already being broken up by surf and wave action, and does not appear to be providing viable protection for the cable line. Staff reiterated its previous strong recommendation that the best way for POOI to resolve the outstanding Coastal Act violation would be to amend **Coastal Permit Application No. E-03-02** to include either removal of the cement cap, or a new proposal for a properly engineered method of stabilizing the power cable that could be demonstrated to be the least environmentally damaging alternative and that is consistent with Coastal Act policies. Staff also invited POOI to submit a separate coastal permit application with such a proposal if POOI preferred to do so.

Staff gave POOI deadlines of May 30, 2003 to indicate how it proposed to resolve the outstanding Coastal Act violation and of June 6, 2003 for submittal of an amended project description of **CDP Application No. E-03-002**. POOI did not meet the May 30<sup>th</sup> or June 6<sup>th</sup> deadlines. Instead, Mr. Alberts sent a response dated June 13, 2003, in which he stated that the project site is devoid of any intertidal flora or fauna to be adversely affected by uncured cement in the water. He further stated that "the cement in question is now cured in any event by reason of the passage of time and exposure to the elements," and that staff's concerns concerning elevated PH levels are not well founded. He also disagreed with staff's conclusion that the cement cap is breaking up as result of wave action and that the cap is not providing adequate protection for the cable. He further stated that any removal of the cap would greatly destabilize the cable terminus and likely result in inherently dangerous circumstances similar to those that necessitated the emergency repairs in the first place, and that POOI sees no evidence whatsoever that the new structure will not adequately protect the integrity of the cable for many years.

Our concerns are shared by the City of Carpinteria. In a letter to Commission staff dated July 1, 2003, the Director of Carpinteria's Parks and Recreation Department stated that City staff has visited the site of the unpermitted work. He pointed out that the cable is on public tidal and submerged property under the jurisdiction of the City of Carpinteria, who is the lessor of the property. He stated that the upper portion of the repair installation appears to be a free-form concrete pour, that the City has not been provided with any evidence that this free-form concrete pour over the electrical cable provides any benefit to the cable, and that during a site visit in the spring of this year, the concrete appeared to be undermined and providing no benefit to the cable. The City expressed concern that the free-form concrete pour may have adverse environmental impacts and indicated that it is the City's preference that the concrete be removed as soon as practical.

On July 25, 2003 Steve Kirby, representing POOI, sent Commission staff an email with an attached letter. In his letter, Mr. Kirby asserted that the placement of the cement cap is exempt from coastal permit requirements based on the provisions of Coastal Act Section 30610(g). This Coastal Act section exempts from coastal permit requirements replacement of certain structures destroyed by natural disaster, if a number of criteria are met. This argument had not been raised by POOI in any of its previous discussions or correspondence. Commission staff responded in a letter dated August 1, 2003, asking for additional information concerning the "destroyed structure" so that staff could evaluate POOI's new claim.

By letter dated August 6, 2003, staff stated that after reviewing the materials submitted by POOI, should staff be unsatisfied that the cement cap is exempt from coastal permit requirements, Commission staff would be forced to commence proceedings for a Cease and Desist Order requiring POOI to remove the cement cap.

By letter dated August 19, 2003, POOI submitted various materials concerning Mr. Kirby's assertion regarding Section 30610(g) of the Coastal Act. Staff examined all the submitted

information and materials , and has determined that the cement cap is not exempt pursuant to Coastal Act Section 30610(g).

Section 30610 of the Coastal Act exempts certain types of development from coastal permit requirements. Subsection (g) exempts the *replacement* of structures destroyed by disaster, so long as the replacement structure meets certain criteria. The free-form cement pumped onto the beach and into the water is not the same "structure" as the one it is purported to replace, even if the two "structures" can be argued to be for the same "use." Indeed, it is unclear as to whether the deposit or pouring of unformed cement is properly described by the term "structure." What existed previously, as shown in the plans you submitted from 1968, is an engineered structure with piers that supported the cable from below. The plans also contain a dotted line that is drawn above the cable support structure that POOI claims represents a cement cap, although no photographic evidence of any such cap has been provided. The cable support structure depicted in the 1968 plan is thus very different from the unstructured pile of cement that was pumped on top of the cable at its terminus on the sandy beach.

Additionally, the slow, continuous deterioration over time of the cable support structure depicted in the 1968 plan, caused by the continuing and long-term erosive effects of saltwater, sand, wind, waves, currents, etc., is not a *disaster*, as that term is used in Section 30610 of the Coastal Act. The Commission has, in the past, recognized an ~~exemption~~ from coastal permit requirements for the replacement of certain structures after concluding that a discrete, catastrophic event caused their destruction. Such an event might be a fire, an earthquake, a flood, or a sudden landslide. In fact, slow, continuous erosion would be expected to occur at this location. The "wave and tidal forces" eroded the cement cap slowly over a long period of time, as opposed to a discrete catastrophic or unexpected event. Their effects were predictable and during the extended period of time over which deterioration of the support structure was occurring POOI could have taken appropriate repair and maintenance measures to prevent the damage. For these reasons, the forces that caused the deterioration in the condition of the cable support structure were not "beyond the control of the owner" for purposes of section 30610(g)(2)(A) and thus do not qualify as a "disaster," nor do they qualify for an exemption from the permitting requirements.

### Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

The Executive Director of the Commission is issuing this Notice of Intent to commence Cease and Desist Order proceedings since unpermitted development has occurred at the subject property. This unpermitted development consists of the pumping of cement at the terminus of an existing power cable. No CDP was applied for nor obtained for this development on the subject property. Therefore, I have decided to commence a Cease and Desist Order proceeding before the Commission. The procedures for the issuance of Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission's regulations.

### Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site as follows:

*In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.*

I have determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) POOI conducted unpermitted development consisting of the pumping of cement to form a "cap" at the terminus of an existing power cable located in the surf zone and on the beach at the subject site.
- 2) The development is inconsistent with the resource protection policies of the Coastal Act, including Section 30231 (biological productivity; water quality) Section 30233 (diking, filling or dredging), Section 30240 (environmentally sensitive habitat areas or ESHA) and Section 30251 (scenic and visual qualities).
- 3) The unpermitted development has the potential to cause continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted environmentally sensitive habitat area through the placement of uncured cement into open coastal waters. In addition, should the cement cap disintegrate over time, as seems likely, the uncured cement will leach into the water, affecting the ocean's PH and having adverse environmental impacts on marine invertebrates. The unpermitted development continues to exist at the subject property; therefore, it is continuing to present a potential threat to resources protected by the Coastal Act. Additionally, should the cap disintegrate, the sharp edges of the cap will pose a safety hazard to both humans and harbor seals.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order and Restoration Order 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 Coastal Act Sections 30820 and 30821.6 authorize the Commission to seek, respectively, penalties for violations of the Coastal Act and daily penalties for any intentional or negligent violation of a Cease and Desist and Restoration Order for each day in which the violation persists, including penalties of \$6,000 per day for as long as the violation persists for intentionally and negligently violating a Cease and Desist or Restoration Order. Finally, Coastal Act Section 30822 provides for exemplary damages for intentionally and knowingly violating the Coastal Act or any order issued pursuant to the Coastal Act.

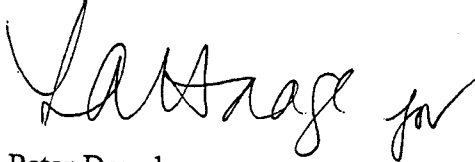
In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Jo Ginsberg, no later than September 30, 2003.**

The Commission staff intends to tentatively schedule the hearing for the Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for November 4-7, 2003 in Los Angeles. If you have any questions regarding this letter or the enforcement case, please call Jo Ginsberg at (415) 904-5269 or send correspondence to her attention at the address listed on the letterhead.

**Options for Resolving this Violation**

If POOI is interested in exploring the possibility of pursuing a Consent Order to settle this Coastal Act violation amicably, please contact Jo Ginsberg of our Enforcement Staff at (415) 904-5269.

Sincerely,



Peter Douglas  
Executive Director

Encl.: Statement of Defense Form for Cease and Desist Order and Restoration Order

cc : Jo Ginsberg, Enforcement Analyst  
Lisa Haage, Chief of Enforcement  
John Bowers, Staff Counsel  
Nancy Cave, Northern California Enforcement Supervisor  
Alison Dettmer, Manager, Ocean and Energy Resources  
Steven Kirby, Esquire  
Matthew Roberts, Director, Carpinteria Parks and Recreation

**HOLLISTER & BRACE**  
A PROFESSIONAL CORPORATION

JOHN S. FOUCHER  
RICHARD L. MONK  
GEORGE A. REMPE III  
STEVEN EVANS KIRBY  
BRADFORD P. QINDER  
JOHN G. BUDDY  
SUSAN H. MCCOLLUM  
ROBERT L. BRACE  
MARCUS B. BIRD  
PETER L. CANDY  
KEVIN P. MOORE  
LISA MUNDRAKE-MATLER  
MICHAEL P. DENVER

ATTORNEYS at LAW  
ESTABLISHED 1888  
1126 SANTA BARBARA STREET  
SANTA BARBARA, CALIFORNIA 93101  
(805) 963-6711

MAILING ADDRESS  
P.O. BOX 630  
SANTA BARBARA  
CALIFORNIA 93102

FAX: (805) 965-0329  
www.hbab.com

November 25, 2003

RETIREE  
WILLIAM A. BRACE  
J. JAMES HOLLISTER III

**BY FAX & MAIL**

Jo Ginsberg, Enforcement Analyst  
CALIFORNIA COASTAL COMMISSION  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Re: **Pacific Operators Offshore, LLC  
Consent Agreement and Cease and  
Desist Order CCC 03-CD-13 (PacOps)**

Dear Ms. Ginsberg:

Enclosed is the Consent Agreement and Cease and Desist Order, together with the Waiver of Defenses, executed by Robert Carone on behalf of Pacific Operators Offshore, LLC. These instruments are submitted to Commission staff subject to the condition that the Consent Agreement and Cease and Desist Order is in fact issued by the Commission as set forth in the enclosed on December 10-12, 2003, or as amended by agreement of the parties; otherwise neither of these instruments shall be of any further force or effect.

Very truly yours,

HOLLISTER & BRACE,  
A Professional Corporation

By   
Steven Evans Kirby

SEK/sgt  
Enclosures (2)  
copy: Robert Carone (w/encs.)

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Item: Waiver of Defenses

CCC-03-CD-13 (PacOps)

EXHIBIT 17

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**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2719  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**WAIVER OF DEFENSES**

Pursuant to Title 14 of the California Code of Regulations Section 13181, respondents to a Coastal Commission Notice of Intent to Commence Cease and Desist Proceedings (NOI) are provided with the opportunity to assert a statement of defense contesting the Coastal Act violations alleged in the NOI or raise mitigating factors related to the alleged violations.

In light of our desire to resolve our Coastal Act violations through settlement with the Coastal Commission, we have agreed to stipulate to the issuance by the Commission of a Consent Agreement and Cease and Desist Order ("Consent Order"). To facilitate this settlement, we hereby waive our right to assert defenses contesting the alleged Coastal Act violations alleged in the NOI and the Consent Order.

Pacific Operators Offshore, LLC

  
Robert Carone, President

November 25, 2003  
Date



**CONSENT AGREEMENT AND CEASE AND DESIST ORDER CCC-03-CD-13**  
**Pacific Operators Offshore, LLC**

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission ("Commission") hereby orders and authorizes Pacific Operators Offshore, LLC ("Respondent"), its employees, agents, and contractors, and any persons acting in concert with any of the foregoing to cease and desist from 1) undertaking on the property identified in Section 3.0 hereof any development that requires a CDP, without obtaining such a permit, and 2) maintaining on said property any development without the authorization of the Coastal Commission. Accordingly, through the execution of this Consent Agreement and Order, the Respondent agrees, and agrees to cause all persons identified in Section 2.0 hereof, to comply with the following terms and conditions.

1.0 TERMS AND CONDITIONS

1.1 Removal of Unpermitted Development

1. All unpermitted development, as identified in Section 4.0 hereof, on the property identified in Section 3.0 hereof shall be removed between June 15, 2004 and July 15, 2004, pursuant to and in compliance with the terms of and schedule set forth in this Order, and the removal plan as approved by the Executive Director, unless the Executive Director determines that the appropriate resolution of this Coastal Act violation would include partial retention as well as partial removal of the unpermitted cement cap, and the Coastal Commission approves a coastal permit or permit amendment authorizing such partial retention, and issues such a permit or permit amendment prior to June 15, 2004.
2. The Respondent shall submit a removal plan for review and approval by the Executive Director by February 1, 2004. Such removal plan should address the method and equipment that will be used to remove the cement cap, and identify safeguards that will be put in place to avoid the discharge of materials to the beach or ocean, or any other damage to coastal resources. The limit of construction and staging activities shall be delineated by the plan, and confined to the minimum area necessary to complete the removal. Use of heavy equipment on the bluff and beach shall be avoided to the greatest degree feasible. The City of Carpinteria, as lessor of the property, shall be provided an opportunity to review and make recommendations concerning the removal plan before it is submitted to the Executive Director.
3. The Respondent shall provide the City Manager of the City of Carpinteria and the California Coastal Commission with at least two weeks notice of the days during which the work will be carried out.
4. All removal work shall be conducted under the direction of a marine mammal monitor who has been approved by the National Marine Fisheries Service. This monitor shall ensure that the Respondent removes the cement cap in such a manner as

Item: Consent Agreement and CDO

CCC-03-CD-13 (PacOps)

EXHIBIT 18

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to avoid or minimize disturbance to the seals. All work, including equipment delivery and removal, worker arrival and departure, staging, construction, and demobilization, shall occur only when the monitor is on site.

5. Before any personnel enters the beach area and any work begins, all personnel shall be instructed by the monitor on measures necessary to avoid or minimize disturbance to the seals.
6. If any heavy equipment is needed on the beach, a monitor shall be present at all times during removal work to protect the public's safety and to minimize interference with the public's use of the beach.
7. Photographs of the subject property shall be submitted to the Commission staff by August 1, 2004 to document the completion of the removal activities. These photographs should be sent to Jo Ginsberg in the Commission's San Francisco office at 45 Fremont Street, Suite 2000, San Francisco, CA 94105.

#### 1.2 Timing and Deadlines

The removal of all unpermitted development on the subject property shall be undertaken after June 15, 2004 and shall be completed by July 15, 2004. Respondent shall submit photographs of the property that clearly document the completion of all removal activities no later than August 1, 2004, to the attention of Jo Ginsberg in the Commission's San Francisco office at the address listed above.

#### 2.0 PERSONS SUBJECT TO THE ORDER

Pacific Operators Offshore, LLC, its agents, contractors and employees, and any persons acting in concert with any of the foregoing.

#### 3.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is subject to this Consent Order is the property located on the beach and in surf zone areas near the Casitas Pier, in the tidal lands of the City of Carpinteria, in Santa Barbara County.

#### 4.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

The unpermitted development that is the subject of this Consent Order consists of placement of cement at the terminus of an existing power cable to construct a cement "cap" over the cable terminus.

#### 5.0 COMMISSION AUTHORITY TO ACT

The Commission has authority to issue this Consent Order pursuant to Public Resources Code Section 30810. The development was performed without the required Coastal Development Permit and in violation of the terms of an Emergency Permit issued by the Commission. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has legal authority to act as set forth in this Consent Order, and Respondent agrees that it will not contest the Commission's authority to issue or enforce this Consent Order.

#### 6.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondent has waived its right to contest the legal and factual basis and the terms and issuance of this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent dated September 10, 2003. Specifically, Respondent has decided not to file a statement of defense and to waive its right to present defenses or evidence at a public hearing to contest the issuance of the Consent Order. Respondent does not contest the Commission's legal authority and basis for adoption, issuance, and enforcement of this Consent Order.

#### 7.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report for Consent Agreement and Cease and Desist Order No. CCC-03-CD-13."

#### 8.0 EFFECTIVE DATE

This Consent 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.

#### 9.0 EXTENSION REQUESTS

If Respondent feels it needs an extension of time for any of the obligations in this Consent Order, Respondent must request from the Executive Director an extension of the deadlines at least 14 days prior to the expiration of any deadline established by this Consent Order. Such a request shall be made in writing and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, which shall be found if the Executive Director determines that Respondent has diligently worked to comply with its obligations under this Consent Order, but cannot meet deadlines due to unforeseen circumstances beyond its control.

#### 10.0 SETTLEMENT/COMPLIANCE OBLIGATION

10.1 In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to pay and the Commission has agreed to accept a monetary settlement in the amount of \$40,000 in settlement of the specific instance of noncompliance with the

Coastal Act referenced in Section 4.0 of this Agreement and subject to the provisions of Section 14 and Section 10.2 herein. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code § 30823). Respondent shall pay the settlement amount, in compliance with the requirements of Section 10.1 herein, and in equal quarterly installments of \$2,500, on or before the 20th day of the first month of each calendar quarter (i.e., January 20, April 20, July 20 and October 20), beginning January 20, 2004, until paid in full. Any payment due date which falls on a holiday or weekend shall be due on the next regular business day. All payments shall be submitted to the attention of Jo Ginsberg of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account. Commission staff will forward the settlement payment to the Coastal Conservancy.

10.2 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, not extended pursuant to Section 9.0 hereof, will constitute a violation of this Consent Order and shall result in Respondent being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. If Respondent violates this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties pursuant to Public Resources Code Section 30821.6 as a result of the lack of compliance with the Consent Order and for injunctive relief for the underlying Coastal Act violation as described herein.

#### 11.0 SITE ACCESS

Respondent agrees to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where work is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting and reviewing the progress of Respondent in carrying out the terms of this Consent Order.

#### 12.0 GOVERNMENT LIABILITIES

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

and agrees (a) to assume the risks to the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (b) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

#### 13.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a cease and desist order have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order, Respondent agrees to waive whatever rights it may have to challenge the issuance and enforceability of this Consent Agreement and Order in a court of law.

#### 14.0 SETTLEMENT OF CLAIMS

The Commission and Respondent agree that this Consent Order settles all monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order (specifically including but not limited to claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondent fails to comply with any term or condition of this Consent Order, the Commission may seek monetary penalties, punitive damages, or other claims for the violation of this Consent Order and injunctive relief for the underlying violation of the Coastal Act. However, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of this order.

#### 15.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future owners of the property, interest and facility, heirs and assigns. Respondent shall provide notice to all successors, heirs and assigns of any remaining obligations under this Consent Order.

#### 16.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 9.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

#### 17.0 GOVERNMENTAL JURISDICTION

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

CONSENT AGREEMENT AND CDO  
CCC-03-CD-13 (PacOps)  
Page No. 6

18.0 LIMITATION OF AUTHORITY

18.1 Except as expressly provided herein, nothing in this Consent Order 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 Consent Order.

18.2 Correspondingly, Respondent has entered into this Consent Order and waived its right to contest the factual and legal basis for issuance of this Consent Order, and the Commission's legal authority to enforce said Order in accordance with its terms. Respondent has agreed that it does not contest that the Commission has jurisdiction to issue and enforce this Consent Order.

19.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as specified in Section 16.0 hereof.

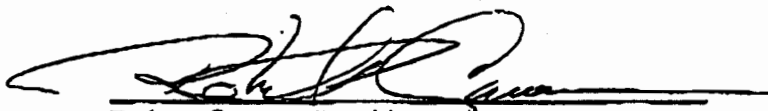
20.0 STIPULATION

Respondent and its representatives attest that they a) have reviewed and agree to the terms of this Consent Order, b) understand that their agreement thereto is final, and c) stipulate to the issuance of said Order by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:

Pacific Operators Offshore, LLC



Robert Carone, President

11/25/03

Date

On behalf of the California Coastal Commission:

\_\_\_\_\_  
Peter Douglas, Executive Director

\_\_\_\_\_  
Date