

CALIFORNIA COASTAL COMMISSION

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Date Filed: 5/29/03
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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

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: 

for 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,

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 1st through May 31st 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:

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

- (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.

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.

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.¹

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.

¹ 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

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.

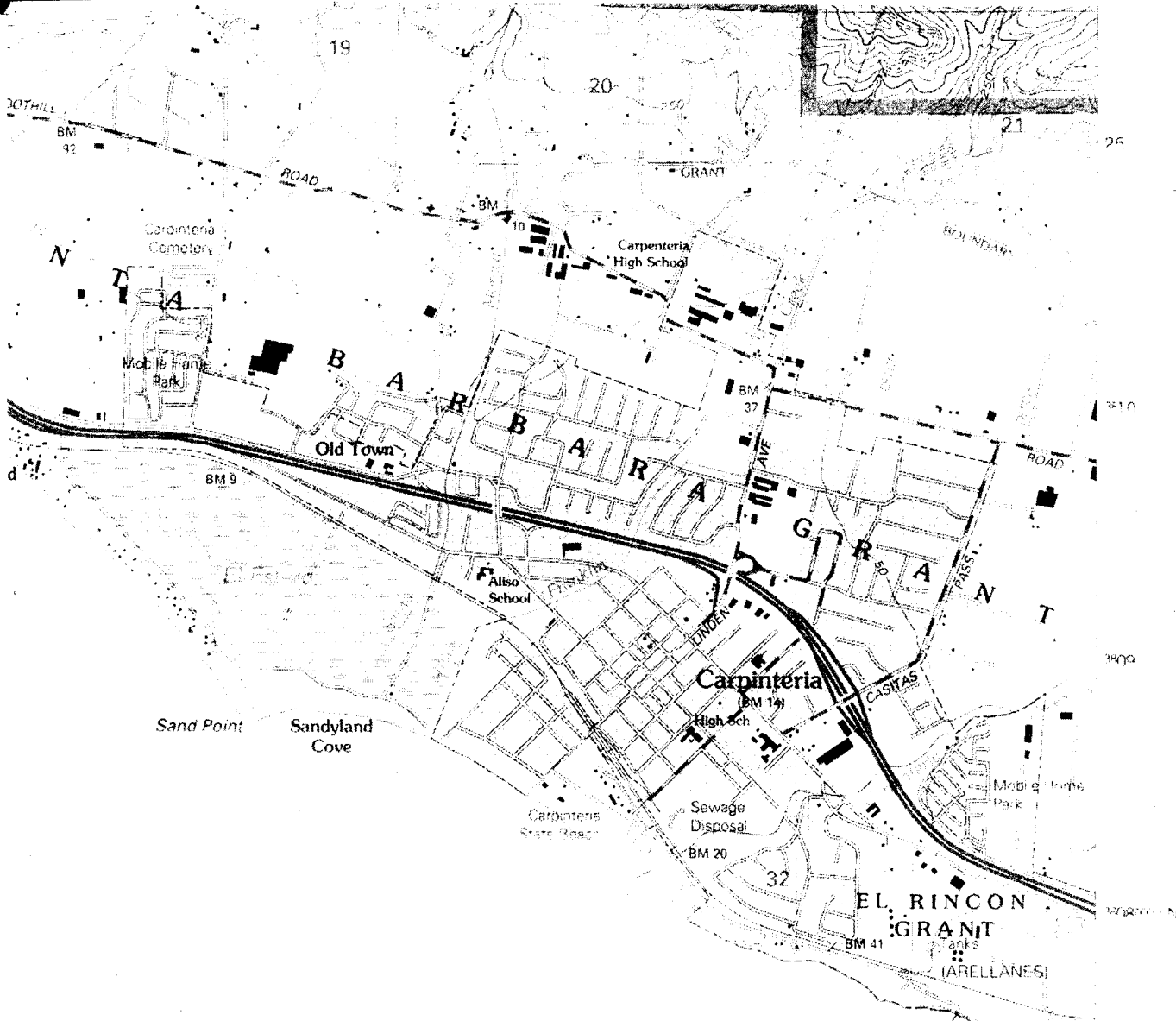
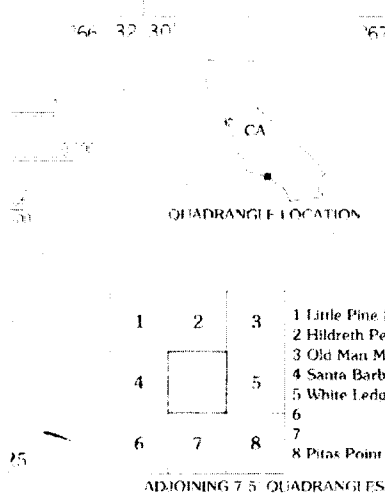


EXHIBIT NO. 1
APPLICATION NO.
E-03-002
Project Location



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

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

CARPINTERIA, CA
 1995
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