

## 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 Categorically 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