

CALIFORNIA COASTAL COMMISSION

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



Th-16a

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

STAFF REPORT FOR COMMISSION CEASE AND DESIST ORDER

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

RELATED VIOLATION FILE: V-7-03-04

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

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

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

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

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

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

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

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

I. SUMMARY

The Johnson Oyster Company, Inc. (JOC) operates a commercial aquaculture business on land that it has leased from the National Park Service (NPS) since 1972.¹ The long-term lease is scheduled to expire in 2012. Drakes Estero, including the area that JOC is leasing, has been designated by Congress as a potential wilderness area pursuant to the Wilderness Act of 1964.² NPS has informed Staff that it cannot, under this Act, extend or renew JOC's lease when it expires in 2012 because the estuary and surrounding land will convert to wilderness, and the continued operation of a commercial aquaculture facility is inconsistent with the wilderness designation. This Cease and Desist Order (CDO) does not address this issue.

JOC's Coastal Act violation is the failure to obtain a coastal development permit (CDP) to authorize: (1) construction of several commercial buildings, additions to pre-Coastal Act structures³, and a horse paddock; and (2) permanent placement of a mobile home, three metal storage/refrigeration containers, and an above-ground diesel fuel tank and a concrete containment structure; (3) drainage of waste water from the shucking room and retail building onto the ground and into

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

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

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

the estuary; and (4) storage of oyster cultivation equipment and disposal of refuse in the estuary and along the shore where it has the potential to impair the water quality and biological health of the estuary. The precise dates that the development was performed are unknown but all the development that is the subject of this CDO was performed after the Coastal Act was enacted. (Photographs of the site taken by Staff showing some of the unpermitted development are attached as EXHIBIT D).

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

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

II. HEARING PROCEDURES

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

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

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

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 Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue this CDO, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of this CDO.

III. MOTION

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

Staff Recommendation of Approval:

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

Resolution to issue Cease and Desist Order:

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

IV. PROPOSED FINDINGS

A. Coastal Act Authority

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

(a) If the Commission, after public hearing, determines that any person... has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit...

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

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

B. Unpermitted Development

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

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

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

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

C. Coastal Resource Impacts⁶

Section 30231 provides:

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

Section 30250 provides:

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

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

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

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

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

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

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

D. Background

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

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

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

The County has been attempting to resolve numerous zoning, building and health code violations at the site since the late 1980s. In September 1995, the County filed a complaint for injunctive relief to enjoin JOC from continuing to violate County codes and require JOC to remedy the violations. In January 1997, the County and JOC entered into a stipulated agreement to resolve the litigation. The Agreement required JOC to submit plans and obtain permits for improvements at the site to resolve the various violations, including construction of a new processing plant, removal of all but four mobile homes and two houses⁷, installation of a residential septic system to service the houses and the mobile homes. The Agreement also required JOC to obtain permits to drill a well and operate a retail food establishment, and for all the development that has occurred at the site without a CDP or a building permit. With the exception of the septic system installation, JOC has failed to comply with the terms of the Agreement.

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

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

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

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

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

E. Allegations

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

F. Statement of Defense

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

Commission Response:

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

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

Commission Response:

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

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

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

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

Commission Response:

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

⁸ Consistency Certification No. CC-34-84, approved December 12, 1984.

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

G. CEQA

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

Exhibits

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

COMMISSION CEASE AND DESIST ORDER NO. CCC-03-CD-12

1.0 REQUIRED-AUTHORIZED ACTIONS

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

- (a) Cease and desist from maintaining unpermitted development at the site, and refrain from performing future development at the site not specifically authorized by a coastal development permit or a Consistency Certification.
- (b) Within 60 days of the issuance of this Cease and Desist Order (hereinafter "Order"), address the unpermitted development that the Executive Director determines has the potential to impair the water quality and biological health of the estuary, including but not limited to the storage of oyster cultivation equipment and disposal of refuse in the estuary and along the shore, drainage of wastewater onto the ground and into the estuary, and improper storage of used motor oil.
- (c) Within 90 days of the issuance of this Order, submit for the approval of the Executive Director, a plan prepared by a qualified land use planner and a certified engineer for the complete removal of all of the unpermitted development constructed or brought to the site after the Coastal Act of 1976⁹ that the Commission would be unlikely to find consistent with Coastal Act policies, remediation of coastal resource impacts, and restoration of the site. The development that must be addressed in the removal and restoration plan consists of several commercial buildings, modifications to buildings that pre-date the Coastal Act, three storage/refrigeration containers, an above-ground diesel tank with a concrete containment structure, and a mobile home and submerged oyster cultivation equipment and materials in the estuary.¹⁰ The plan must also characterize any impacts to coastal resources from the unpermitted development onshore and in the estuary and provide for remediation of those impacts, including but not limited to restorative grading and soil remediation and the use of best management practices to protect the

⁹ The buildings that pre-date the Coastal Act include the building that houses the shucking room and the retail counter, the two houses, and two of the four mobile homes. In 1984, the Commission authorized a third mobile home at the site through Consistency Certification No. CC-34-84.

¹⁰ JOC may apply to the Commission for a coastal development permit to retain the unpermitted mobile home and oyster cultivation equipment in the estuary pursuant to Section 1.0(d).

water quality of the estuary.¹¹ Should the plan call for the removal of oyster cultivation equipment and materials in the estuary, the plan must provide measures to minimize negative impacts to coastal resources from the removal.

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

2.0 IDENTIFICATION OF THE PROPERTY

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

3.0 PERSONS SUBJECT TO THIS ORDER

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

4.0 DESCRIPTION OF COASTAL ACT VIOLATION

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

¹¹ Nothing in this Order shall be interpreted or construed to represent Commission approval of any new or existing development that may be proposed in the removal and restoration plan JOC is required to submit pursuant to this Order.

5.0 COMMISSION AUTHORITY TO ACT

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

6.0 FINDINGS

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

7.0 EFFECTIVE DATE

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

8.0 COMPLIANCE OBLIGATION

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

9.0 EXTENSIONS OF DEADLINES

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

10.0 SITE ACCESS

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

11.0 APPEALS AND STAY RESOLUTION

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

12.0 GOVERNMENT LIABILITY

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

13.0 GOVERNING LAW

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

14.0 NO LIMITATION OF AUTHORITY

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

Issued this 11th day of December, 2003

Peter M. Douglas, Executive Director
California Coastal Commission

Date