STATE OF CALIFORNIA
SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

EXHIBIT E

Permittee' Copy

PERMIT NO. 5-77
(Issued on June 15, 1977, As
Amended Through July 8, 1982)
AMENDMENT NOS. THREE, FOUR AND FIVE

City of Benicia
City Hall
250 East "L" Street
Benicia, California 94510

ATTENTION: John F. Silva
City Manager

Gentlemen:

On June 2, 1977, the San Francisco Bay Conservation and Development Commission, by a vote of 17 affirmative, 1 negative, and 0 abstentions, approved the original resolution pursuant to which the permit had been issued. On December 1, 1977, the Executive Director of the San Francisco Bay Conservation and Development Commission approved Amendment No. One to the permit, pursuant to Regulation Section 10722. ~~Moreover,~~ on August 6, 1981, the San Francisco Bay Conservation and Development Commission, by a vote of 18 affirmative, 0 negative, and 0 abstentions, approved Amendment No. Two to the permit which had been issued. On May 20, 1982, the San Francisco Bay Conservation and Development Commission, by a vote of 20 affirmative, 0 negative, and 0 abstentions, approved Amendment No. Three to the permit which had been issued. Moreover, on July 8, 1982, the Executive Director of the San Francisco Bay Conservation and Development Commission approved Amendment Nos. Four and Five, pursuant to Regulation Section 10722, ~~the amended resolution~~ pursuant to which this amended permit is hereby issued:

I. Authorization

A. Subject to the conditions stated below, the permittee is granted permission to do the following at the Benicia waterfront, between Point Benicia and East Fifth Street, in the City of Benicia, Solano County:

1. In the Bay

a. Dredge approximately 120,000 cubic yards of sediment from a portion of the marina basin, the shoreline area, and Carquinez Strait to

provide an access channel to the marina basin and to open up a portion of the marina basin to tidal action; and dispose of the spoils at the federally-approved Carquinez Strait disposal site;

b. Construct an approximately 870-foot-long breakwater on each side of the access channel, covering approximately 2,800 square feet of water surface;

c. Construct and place piles and floats covering approximately 82,480 square feet (1.9 acres) for 309 open berths, a fuel/pumpout station and visitor dock, a public tie-up dock, a rental boat dock, a traveling boat hoist, and a boat sling hoist, all in the 18-acre marina basin;

d. Use the berthing facilities for not more than 309 small boats (live-aboard boats or houseboats are not authorized);

e. Place approximately 4,000 linear feet of riprap on the banks of the new marina basin and a portion of the access channel;

f. Repair the existing riprap around Point Benicia and add to the existing riprap as required for erosion control and stabilization of existing banks;

g. Construct a public fishing pier at the end of Point Benicia covering approximately 3,056 square feet of water surface, using existing sound piles and placing any required new piles;

h. Construct two public access boardwalks with outlook platforms covering approximately 6,752 square feet of the restored tidal marsh; ~~and~~

i. Place a sand and gravel scour protection mat around the end of the breakwater covering approximately 1,900 square feet of the bottom of Carquinez Strait; <u>and</u>

j. Perform approximately 40,000 cubic yards of initial maintenance dredging within the marina basin and approximately 10,000 cubic yards of maintenance dredging per year thereafter for a six year period from the date of this amended permit; and dispose of the spoils at the federally-approved Carquinez Strait disposal site (Amendment No. Four).

2. Within the 100-foot Shoreline Band

a. Create an approximately 18.6-acre tidal marsh including the excavation of drainage channels and the planting of marsh vegetation between the area of the former Southern Pacific right-of-way and the existing shoreline from First Street to East Fifth Street;

b. Install tide gates at the eastern and western ends of that newly created tidal marsh which is east of the marina access channel;

c. Pave an area for approximately 275 parking places, 24 trailer parking spaces, 12 of which are at the foot of Fifth Street, and portions of access roadways in the shoreline band area covering approximately 179,000 square feet;

d. Provide approximately 8,500 linear feet of public access walkway including bicycle paths along the shoreline of the entire project;

e. Construct a two-story, wood-framed restaurant at Point Benicia with ground floor coverage of approximately 4,200 square feet and second floor area of approximately 6,800 square feet which includes an open air deck approximately 2,600 square feet in area, and landscape the surrounding public access area of approximately 16,500 square feet including walkways;

f. Construct one-, two- and three-story buildings covering no more than 113,050 square feet at ground floor level for commercial, office, restaurant, boat service, residential, and

public uses as shown on the submitted plan entitled "Old Capitol Marina, Master Plan," revised July 28, 1981, by Ralph Alexander Associates, Landscape Architecture;

g. Construct six public restrooms;

h. Landscape the public access areas;

i. Relocate the existing 60-inch storm drain outfall pipeline, remove and/or relocate utility and drainage pipelines, and install a 24-inch diameter drainage pipe near the foot of Second Street;

j. Construct and landscape a park like area at the northwest corner of the marina which includes paved plazas of approximately 57,500 square feet of which the landscaped green area is not less than 36,300 square feet; ~~and~~

k. Construct and landscape a park area at the west end of the marina spit of approximately 10,575 square feet; and

l. Install sheet piles or other appropriate material along approximately 600 linear feet of the north bank of the marina basin and approximately 300 linear feet of the west bank to stabilize the bank in the configuration approved in the original permit (Amendment No. Five).

B. This amended authority is generally pursuant to and limited by the application filed May 2, 1977, including its accompanying exhibits; the letter requesting Amendment No. One dated October 11, 1977 with additional information for the amendment supplied in subsequent letters dated November 4, 1977 and November 11, 1977, including accompanying exhibits; ~~and~~ the application for Amendment No. Two filed June 19, 1981, including accompanying and subsequent exhibits, including the plan entitled "Old Capitol Marina, Master Plan," revised July 28, 1981, by Ralph Alexander Associates, Landscape Architecture; the application for Amendment No. Three filed March 23, 1982, including its accompanying and subsequent correspondence and exhibits, specifically the plan entitled "Increase Setback Open Area Plan," dated May 12, 1982, by Ralph Alexander Associates, Landscape Architecture; the application for Amendment

No. Four filed July 1, 1982, including its accompanying exhibits; and the application for Amendment No. Five filed July 1, 1982, including its accompanying exhibits, but subject to the modifications required by conditions hereto.

C. Work authorized, as amended through Amendment ~~No.~~ Two Five herein, must commence prior to December 31, 1982, or this authorization, as amended through Amendment No. ~~Two~~ Five, will lapse and become null and void. Such work must also be diligently prosecuted to completion and must be completed by December 31, 1986, unless an extension of time is granted by a further amendment of the amended authorization.

D. The project will result in the creation of approximately 18 acres of new Bay surface which will be covered by approximately 1.96 acres of small boat berths, breakwater structures, a fishing pier. In addition, the project will result in the restoration of approximately 18.6 acres of a former degraded and filled tidal marsh which will be covered by an outlook platform and access boardwalk covering approximately 6,750 square feet. The total net increase in the Bay as a result of this project will be approximately 38.7 acres. New public access will be provided along approximately 8,500 linear feet of Bay shoreline. Amendment No. Three increases the amount of public access along the shoreline by about one-half acre.

II. Special Conditions

The authorization, as amended through Amendment No. ~~Two~~ Five, shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

A. Specific Plans and Plan Review

1. Plan Review. No construction or use whatsoever shall be made of any facility authorized, as amended through Amendment No. ~~Two~~ Five herein, until final precise site, engineering, grading, architectural and landscaping plans, and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, and approved in writing, by or on behalf of the Commission.

a. Architectural Plans. Architectural plans submitted for review shall consist of exterior elevations with building details which indicate the location, dimensions, exterior treatment, and color of all structures, outside signs and other fixtures.

b. Landscaping Plans. Landscaping plans shall be prepared and signed by a licensed landscape architect and may be submitted as part of the architectural plans or submitted separately. In either case, such plans shall consist of grading, staking, planting, and irrigation sheets showing the location, types and dimensions of all pathways, public access areas, structures, parking spaces, benches, tables, trash containers, lighting, and a list of the names and quantity of all plants species to be used.

Architectural and landscaping plans submitted for review shall be accompanied by a letter requesting plan approval, identifying the type of plan submitted, the portion of the project involved, and indicating whether the plan is final or preliminary. Approval or disapproval shall be based upon (a) completeness of the plan in showing the features required above, (b) consistency of the plan's criteria and information with the specific terms and conditions of this amended authorization, and (c) consistency of the plan with the recommendations of the Design Review Board. In each instance, plan review shall be completed, by or on behalf of the Commission, within 45 days after receipt of the plan or plans to be reviewed, and shall consist of a letter specifically referring to the submitted plan or plans which indicates the plan or plans have been approved or disapproved.

2. Changes to Approved Plans. After final plans have been approved pursuant to Special Condition II-A-1, no change shall be made to such approved plan without first obtaining written approval of the proposed change by or on behalf of the Commission. Approval or disapproval shall be made within 30 days after the proposed change in plan has been submitted for approval and shall be based on a finding that the change complies with the authorization, as amended through Amendment No. ~~Two~~ Five, and would not detrimentally affect public access, landscaping, open space, open water, or other public benefits.

3. Conformity with Approved Plans. All leases, contract specifications, and all structures and improvements at the project site shall conform to the final plans approved pursuant to this condition. No structure shall be placed nor any improvement undertaken that is not clearly shown and indicated on the approved final plans. After construction, no noticeable changes to the exterior of any structure shall be made, no additional structures shall be built, nor shall park, open space, open water, landscaped or public access areas be altered without first obtaining written approval by or on behalf of the Commission pursuant to Special Condition II-A-2.

4. Marina Construction. The standards of construction for the marina piles, floats, and appurtenant facilities shall be equal to or better than the criteria for such construction established by the State Department of Boating and Waterways and the Office of Architecture and Construction.

B. Notice to Private Developers. Prior to construction of any commercial, residential and recreational building, including the restaurants, chandlery, yacht club, and harbormaster's office, in the shoreline area that is subject to BCDC's jursidiction, the permittee shall provide any private developers with a copy of (1) this authorization, as amended through Amendment ~~Two~~ Five, calling the developer's attention to the provision regarding public access and landscaping, and (2) the policies of Special Area Plan No. 3: Benicia Waterfront regarding public access and design controls.

C. Adoption of Ordinances. This authorization, as amended through Amendment No. ~~Two~~ Five, shall not become effective until the City of Benicia adopts ordinances identical to, or substantially similar to, the ordinances included in Special Area Plan No. 3: Benicia Waterfront as follows: (1) the Shoreline Physical Constraint Area Ordinance, including seismic requirements; and (2) the Ordinance Covering Underwater Lots.

D. Water Quality

1. Construction Operations. All construction operations shall be performed to minimize roiling of the water and to prevent timbers,

floats, or other construction materials from drifting and presenting either a pollution or navigation hazard.

2. Bilge Water and Oily Wastes. Depositing any bilge water or other oily wastes in the marina basin and Bay is strictly prohibited. Prior to the use of any of the facilities authorized, as amended through Amendment No. ~~Two~~ Five herein, the permittee shall install a suitable facility for receiving and disposing of bilge water and oily wastes. The facility shall conform to all applicable codes and regulations including, but not limited to, approval by the Regional Water Quality Control Board, the U. S. Coast Guard, and the Environmental Protection Agency, as appropriate.

3. Sewage Facilities. The permittee shall install and maintain a convenience facility for the pumping out of boat holding tanks and the disposal of sewage from portable toilets into shoreside sewers with fees comparable to those in public and private marinas around the Bay.

4. Use of Marina Toilets

   a. The permittee shall make it a requirement of the use or occupancy of any boat slip that any boat if equipped with a marine toilet (head), shall contain an adequate holding tank, incinerator recirculation device, or other equivalent device approved by or on behalf of the Environmental Protection Agency and the U. S. Coast Guard that would receive and retain sewage from the boat's head to preclude discharge of sewage or chemicals into the waters of the marina; or have the marine toilet rendered inoperable while any such boat is moored in the marina. The permittee shall require that marine toilets of boats without holding tanks or equivalent devices are, in fact, rendered inoperable at all times when the boats are moored in the marina.

b. The permittee shall make it a requirement of the use and occupancy of any boat slip in the marina that any dumping of solid or liquid waste into that portion of San Francisco Bay within the mooring area is forbidden and any such dumping shall be cause for immediate cancellation of the right of such use or occupancy and shall be reported to all appropriate authorities.

c. The permittee shall submit to the Commission a copy of the berthing agreement which includes the requirements of paragraphs II-D-4a and II-D-4b.

d. The permittee shall permanently and adequately enforce, through appropriate policing, the rules and regulations adopted pursuant to this condition. The permittee shall submit to the Commission's staff the name, address and telephone number of the person who is responsible at the marina for requiring that the rules and regulations adopted pursuant to this condition are enforced.

e. The permittee shall provide, in the marina, adequate restrooms for boat owners and users, and guests.

f. The Commission specifically reserves the right, in the event of repeated or serious problems with dumping of sewage from boats into the Bay within the marina, to require, in addition to the above, and at the option of the permittee, either that shoreside sewer connections be provided for each offending boat berth and that said boat be connected to said sewer whenever moored in the marina; or, in the alternative, that the permittee, upon written demand of or on behalf of the Commission, shall permanently remove or cause to have removed said offending boat or boats from the marina.

E. Man-Made Marsh

1. Prior to the use or occupancy of any berth authorized herein:

   a. The permittee shall open to tidal action the area to be developed as tidal marsh pursuant to paragraph I-A-2a, above. Such area shall be developed as a tidal marsh in accord with the design report entitled "Water Quality Maintenance and Marsh Development for the Benicia Marina," prepared by Ralf C. Carter, and in accord with the recommendations of the Department of Fish and Game.

   b. The permittee shall, by instrument or instruments acceptable to counsel for BCDC, dedicate the 18.6-acre marsh to permanent preservation as open space subject to tidal action. Such instrument or instruments shall further provide that such area shall be deemed to be, and shall for all purposes be treated as if it were, within the "bay" jurisdiction of the Commission pursuant to Government Code Section 66610(a).

2. Prior to June 30, 1979, the permittee shall complete the development of the tidal marsh authorized in paragraph I-A-2a above, including the planting of all necessary vegetation.

F. Public Access

1. Area. Until this authorization, as amended through Amendment No. ~~Two~~ Five herein, is further amended, revoked, or otherwise modified by or on behalf of the Commission, the permittee shall hold and maintain the entire shoreline area within the project area shown bayward from the edge of buildings, or private patios in the case of the residential units, and including all paths, boardwalks, plazas, and connections from public streets to the public access area ~~all board piers, the visitor dock, and the small boat dock up dock~~ as shown on the plans entitled "Old

Capitol Marina, Master Plan," revised July 28, 1983, by Ralph Alexander Associates, Landscape Architecture (see attached exhibit), and as generally increased by the plan entitled "Increased Setback Open Area Plan," dated May 12, 1982, by Ralph Alexander Associates, open to the public free of charge for walking, viewing, sitting, picnicking, fishing, bicycling and related purposes. ~~Security gates may be placed at the entrance to all finger piers.~~ Members of the public making use of the facilities of the marina may make use of the small boat tie up dock and the visitor dock subject to such reasonable rules and regulations as the City of Benicia deems necessary for security and safety, provided such rules and regulations are approved by or on behalf of the Commission.

2. Instruments. Prior to the sale, lease or other transfer of property interests in the project area by the City of Benicia, the permittee shall submit instruments to BCDC counsel for approval which shall create irrevocable rights in favor of the public for the purposes indicated and which shall include a map that shows the property lines and dimensions of such public access areas, the 6.1 Mean Sea Level contour line (USGS, 1929 datum), and contains a metes and bounds description of the areas. The instruments shall be in a form suitable for recording in the county where the property is located. Approval or disapproval of the instruments shall occur within 30 days after submittal for approval and shall be based upon the sufficiency of the instruments to create the rights and duties indicated in the condition. Within 60 days after approval, the permittee shall record the instruments and shall provide evidence of recording to the Commission. Such instruments may include non-exclusive easements for maintenance of facilities and improvements authorized herein. No sale, lease or other transfer of a property interest from the City of Benicia in the project area shall take place, nor shall any assignment of any portion of

this authorization, as amended through Amendment No. ~~Two~~ Five herein, become effective until the instruments have been approved as provided herein.

3. Permanent Public Access Improvements. The public access improvements shall substantially conform to and be consistent with the submitted drawing entitled "Old Capitol Marina Master Plan," revised July 28, 1981, by Ralph Alexander Associates, Landscape Architecture (see attached exhibit), shall be reviewed and approved in accordance with Special Condition II-A-1, and shall include the following:

   a. A continuous all weather pedestrian pathway around the entire perimeter shoreline of Point Benicia, the marsh, the marina basin and the marina spit. The width will not be less than six feet, and shall be separated from the bicycle path by landscaping or by bollards where the paths are joined except in plazas.

   b. A continuous all weather bicycle pathway at least six feet wide around the entire perimeter shoreline approximately paralleling the pedestrian path.

   c. Appropriately surfaced plaza areas, boardwalks, and irrigated landscaped areas as shown on the Master Plan.

   d. Two small boardwalks into the marsh as shown on the Master Plan.

   e. Benches, trash containers and lighting shall be placed along the entire public path system in appropriate locations. Appropriate picnic tables shall be placed in the larger public access areas such as at the northwest corner of the marina. Lighting shall be designed to encourage use by the public at night.

f. A fishing pier at Point Benicia containing a fish cleaning facility, public restrooms, benches, tables, trash containers, and lighting.

g. Six public restrooms of which two shall be free-standing structures and the other four may be enclosed within restaurants or commercial facilities as long as separate exterior entrances are provided. Each facility shall have accompanying public restroom signs.

h. Approximately 20 public access and 10 public parking signs at appropriate locations and of a size and design approved pursuant to Special Condition III-A. Signs shall be placed at the entry of each public parking area, at the point of entry to the continuous path from each parking area, the entry of each marsh boardwalk, the entry of the fishing pier, and any other location where the separation of public and private spaces may not be readily apparent.

4. Phasing of Public Access Improvements

a. Historical Park. Prior to the commencement of construction of the restaurant on Point Benicia, an enforceable commitment approved by or on behalf of the Commission shall have been made by the City for the improvement of the historical park at the foot of First Street as specified in the Special Area Plan No. 3: Benicia Waterfront. Upon completion of the relocation of First Street outside of the historical park area, the existing First Street paving within the park area shall be removed.

b. Public Access Improvements -- General. Prior to the use of any buildings authorized herein, the adjacent public access improvements shall have been completed with the exceptions provided herein.

c. Fishing Pier at Point Benicia. Prior to the use of any marina slip, the fishing pier at Point Benicia shall be completed.

d. Commercial Area Along "B" Street and the Relocation of First Street. Prior to the use of any marina berth, interim landscaping and public access improvements shall be completed along the shoreline of "B" Street and the relocation of First Street. Such improvements may be less extensive than the permanent improvements but shall include clearing of debris, planting appropriate low maintenance grasses or ground cover, and the placement of appropriate benches and trash containers.

e. End of the Marina Spit. Prior to the use of any marina berth in the southern part of the marina, public access improvements and landscaping along the entire marina spit shall be completed including the end of the marina spit.

f. Entrance to Marina at End of "B" Street. The public plaza at the end of "B" Street shall be constructed concurrently with the improvement of "B" Street. The extent of the area to be improved shall be determined by or on behalf of the Commission consistently with providing an appropriate and attractive area for the public but shall take into account potential disruption caused by the construction of adjacent facilities authorized herein.

5. Maintenance of Public Access Areas. All areas and improvements required by Special Condition II-F including landscaping, signs, restrooms, and public paths shall be permanently maintained by, and at the expense of, the permittee, any assignees, lessees, and sublessees or any other successor in interest. Maintenance shall include repairs to all path surfaces, replacement of any plant material that dies or becomes unkempt,

periodic clean-up of litter and other materials, and assuring that public access signs remain in place and visible. Within 30 days after notification by staff, the permittee or any successors and assigns shall correct any maintenance deficiency noted in a staff inspection of the site.

C. Marina Facilities

1. Boat Hoists. At least one boat hoist shall be a small sling hoist or otherwise appropriately designed for use for small craft under 22 feet in length to reduce the cost of operating the hoist and minimizing user fees. The hoist shall be open to the general public at least during daylight hours seven days per week, and shall be completed prior to the use of any marina berths. Hoist fees shall be comparable to fees charged in public and private marinas around the Bay for similar facilities.

2. Acquisition of Marina Berths. The City of Benicia, regardless of any subsequent lease or assignment of all or part of this authorization, shall establish the procedure for acquisition of marina berths by members of the public and shall establish a procedure for subsequently and regularly auditing any waiting lists to assure that all members of the public have an equal opportunity to use the marina. Such procedures shall be approved by or on behalf of the Commission prior to the use of any of the marina berths. Such procedures may provide for lotteries or first-come-first-served access to the berths and the establishment of waiting lists, but shall not provide for the subdivision of the marina berths or for leases longer than month-to-month. Upon approval, such procedures shall become incorporated herein as conditions.

3. Dredge Spoil Disposal. The disposal of all dredge spoils from maintenance dredging of the marina shall take place at the approved U. S. Army Corps of Engineers disposal site in the

Carquinez Strait or an upland location outside of the Commission's jurisdiction. In using the Carquinez Strait disposal site, the permittee shall make reasonable efforts to dispose of dredge spoils between December and March inclusively.

4. Marina Shoreline Stabilization. All protective work designed to stabilize the shoreline of the marina basin shall be subject to the design review provisions of Special Condition II-A, shall stabilize the slope in the configuration approved herein, and in no event shall any sheet piles or similar structures extend above the surface of the slope making up the side of the basin.

H. Commission Jurisdiction over Fill Area. Notice is hereby given that, under the McAteer-Petris Act, the tidal marsh and marina basin areas that will be within the Commission's jurisdiction when excavation is completed and the areas are opened to tidal action, and the area of the approved project that is presently within the Commission's jurisdiction, under Section 66610(a) remain within that jurisdiction even after fill or substantial change in use, authorized by the Commission, may have changed the character of an area; so that the permittee or the permittee's successors in interest will require further permit action by or on behalf of the Commission prior to any future changes of use or work within areas filled pursuant to this authorization, as amended through Amendment No. ~~Two~~ Five.

III. Findings and Declarations

This authorization, as amended through Amendment No. ~~Two~~ Five, is based upon the Commission's findings and declarations that the work and uses authorized herein are consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the California Environmental Quality Act, and the Commission's Amended Management Program for San Francisco Bay for the following reasons:

A. Effect on Public Access from Change in Use. The uses authorized around the marina basin in the original authorization were commercial with some residential use allowed on the second floor. The Commission approved the public access proposed in the past because commercial activities tend to draw members of the public to the shoreline of the Bay. The development was also consistent with the findings of Special Area Plan No. 3: Benicia Waterfront, which encourage commercial and public access uses and states, in part: "The site lends itself to public uses; residential on second and third floors

(inland section only)...." (General Findings for the Marina District, page 22.) The policies for the Marina District also authorize "limited small-scale residential" as well as commercial recreation and public access (page 25).

Amendment No. Two proposes to eliminate most of the commercial uses immediately around the marina basin and replace them with 192 units of two- and three-story townhouses. The Commission finds that the original uses were not the only way in which the Special Area Plan could be complied with, and that the primary concern was maximizing the amount of public access around the marina. Therefore, the Commission finds that it can authorize a change to completely residential units around the marina without changing the Special Area Plan if the amended project contains additional public access of sufficient area and quality to make up for the reduction caused by the elimination of the commercial uses. To provide equivalent quality public access, however, requires additional public access area as well as greater attention to the details of the project design to offset the more private nature of the residential uses.

B. Public Access. The proposed project, subject to Special Condition II-E stated herein, would provide maximum feasible public access to the Bay shoreline consistent with the project by providing approximately 8,500 feet of continuous landscaped pedestrian and bicycle paths around the entire shoreline of the project, including the provision of approximately 45 percent of the area of Point Benicia for a landscaped pedestrian and bicycle path. The permittee has also increased the amount of area available to the public around the marina by ~~92,950~~ 120,000 square feet (~~2.13~~ 2.7 acres) — from about 3.54 acres in the original permit to about ~~5.67~~ 6.2 acres. At the residential units, the proposed public access area would vary in width from 100 feet to a minimum of 39 feet, measured from the top of the bank to private patio areas. The 34-foot-high, two- and three-story residential buildings would be set back an additional 10 feet from the patio line.

In addition, the permittee proposes to build the historic park at the end of First Street at the time the restaurant at the end of Point Benicia is constructed, widen the pedestrian entrance to the public access and marina at "D" Street, provide a major expansion of the public access area at the northwestern corner of the marina, and provide a small boat hoist and additional trailer parking spaces at the eastern end of the marina. With these changes, and with additional conditions relating to the phasing of public access improvements and the operation of the marina, the Commission finds that the project can be approved as providing quality public access equivalent to that in the original project and is the maximum feasible consistent with the project.

Amendment No. Three involves the deletion of unrestricted public access from the head piers, the visitor dock, and the small boat tie up dock. To offset this reduction, the permittee has proposed to increase the amount of landscaped public access along the shoreline by approximately one-half acre, primarily along the western edge of the marina and at the northeast corner. The precise area will be determined during plan review. The Commission finds that public access to the various docks does present a potential for safety and security problems that may result in increases in insurance costs for the permittee. Although these problems can be and have been minimized by the imposition of reasonable rules and regulations and the construction of safety railings, some problems may be inevitable and must be evaluated by the Commission on a case-by-case basis. In this case, the increase in public access proposed by the permittee along the shoreline is likely to be used more by the public than unrestricted access to the various docks and therefore offsets any decrease in public access on the docks. Consequently, the Commission finds that the project, as amended and conditioned to assure the increase in public access on the shoreline, provides maximum feasible public access to and along the Bay consistent with the project. Limited access to the visitor dock and the small boat tie up dock is provided in the conditions, subject to the establishment of reasonable rules and regulations by the City to allow members of the public to make use of the marina facilities safely and to allow the public closer access to the water and vessels in the marina.

Fill. The 2.1 acres of Bay fill for floats, a fishing pier, breakwaters, and outlook platforms is the minimum amount necessary for a water-oriented recreational use for which fill may be permitted in accordance with Government Code Sections 66605(a) and 66605(c), and the Bay Plan Policies on Fill. The nature, location, and extent of the fill will minimize harmful effects to the Bay, inasmuch as special provisions herein for the marina basin will assure water circulation. Any detriment to wildlife habitat will clearly be exceeded by the public benefits of increased public access to San Francisco Bay, increased water surface area and the new marsh to be created.

D. New Bay Surface. By establishing and maintaining a new tidal marsh of approximately 18.6 acres and a new, approximately 18-acre water area for the marina basin, the permittee will increase the public benefits from the project by offsetting, to a large extent, the loss of organisms or habitat caused by the dredging and the increased human use of the project site.

E. Dredging and Excavation. Dredging sediments in Carquinez Strait and the adjacent shoreline band area, and from a portion of the marina basin is necessary to provide an access channel to the proposed marina and to open up a portion of the marina basin to tidal action, and the disposal of spoils from the proposed access channel and marina basin area is in accordance with Bay Plan policies in that the spoils will be deposited at a federally-designated

disposal area. In addition, the excess excavated materials from the remaining portions of the marina basin will be disposed of at upland locations outside the Commission's jurisdiction. With regard to future maintenance dredging, the marina project has been designed ~~so that silt-laden waters will be prevented from entering the marina access channel and basin, thus reducing~~ to reduce the need for maintenance dredging to 10,000 cubic yards per year after intial maintenance dredging of 80,000 cubic yards. As disposal of maintenance dredging spoils will be at a federally designated disposal area, Amendment No. Four complies with Bay Plan Policies on Dredging. On the basis of comments by the U. S. Fish and Wildlife Service, the disposal of maintenance dredge spoils are limited to the months of December through March to reduce the potential for impacts to anadromous fish where it is reasonable to do so. Amendment No. Five authorizes protective works along the basin shoreline to stabilize the slope in a manner that will not have a visual impact.

F. Environmental Impact. The City of Benicia, the permittee and lead agency for the project, certified the Final Environmental Impact Report on the "Benicia City Marina" on October 23, 1975. The Environmental Impact Report, in part, found that the public benefit from the project substantially outweighed the public detriment due to unavoidable adverse impacts on the environment. The lead agency found that the changes proposed in Amendment Nos. Two and Three were covered by the original Environmental Impact Report, and certified that Amendment Nos. Four and Five were categorically exempt.

G. Public Trust. By this authorization, as amended through Amendment No. ~~Four~~ Five, the Commission determines that the proposed project is consistent with the public trust.

H. Management Program. The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

IV. Standard Conditions

A. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This amended permit, does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.

B. The attached Notice of Completion shall be returned to the Commission within 30 days following completion of the work.

C. Work must be performed in the precise manner and at the precise locations indicated in your applications and amendment requests, as such may have been modified by the terms of the permit, as amended through Amendment No. Two, and any plans approved in writing by or on behalf of the Commission.

D. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.

E. The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the application for the original and amended permit and the amended permit itself and agrees to be bound by all terms and conditions of the permit, as amended through Amendment No. Two, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.

F. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

G. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

H. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If this amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.

I. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke an permit, or amended permit, for such violation after a public hearing held on

reasonable notice to the permittee or its assignee if the permit, or amended permit, has been effectively assigned. If this amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee or its assignee if the amended permit has been assigned.

J. This amended permit shall not take effect unless the permittee executes the original of this amended permit and returns it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

K. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction non-withstanding the placement of any fill or the implementations of any substantial change in use authorized by this amended permit.

L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction up to the line of highest tidal action.

M. Unless the Commission directs otherwise, this amended permit shall become null and void, if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee or its assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

MICHAEL B. WILMAR
Executive Director

Enc.

MBW/mm

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
Environmental Protection Agency, Attn: Eric Yunker, E-H-2
Department of Fish and Game, Attn: Regional Manager, Region III
Department of Boating and Waterways, Attn: Bill Satow
State Lands Commission, Attn: Fred Sledd
County of Solano, Attn: Planning Department
Bureau of Sport Fisheries and Wildlife
U. S. Coast Guard

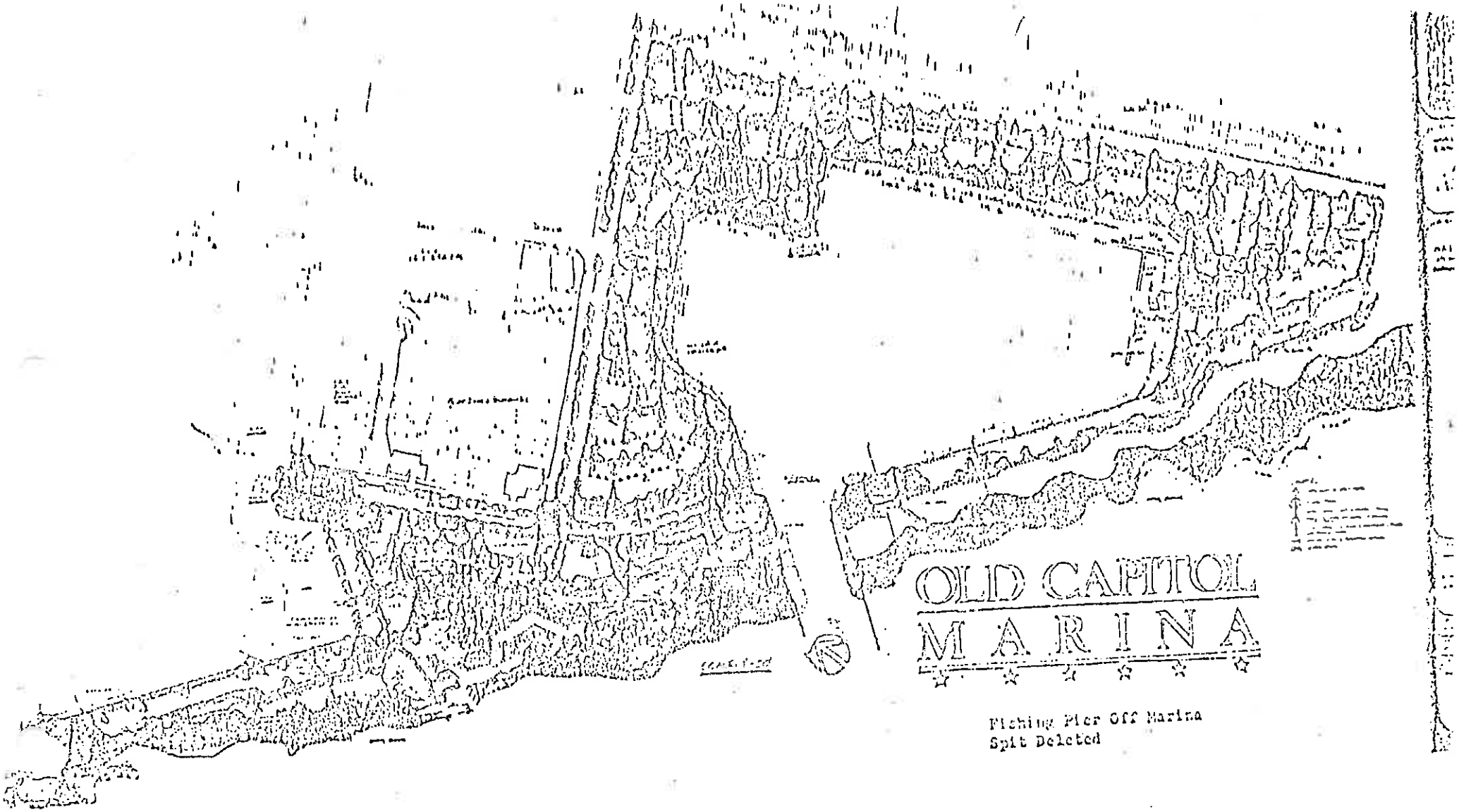
* * * * * * * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____ _____
Applicant

On _____ By: _____

_____
Title



Fishing Pier Off Marina
Spit Deleted

PERMIT NO. 5-77
(Issued On June 16, 1977, As
Amended Through July 8, 1982)
AMENDMENT NO. THREE, FOUR AND FIVE

CITY OF BENICIA

NOTICE OF COMPLETION

San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue, Room 2011
San Francisco, California 94102

Gentlemen:

You are hereby informed that the work authorized by the above-referenced permit was completed on _____

Executed at _____ On _____, 19 __

By: _____

_____
Title