File

Making San Francisco Bay Better

RECEIVED
DEC 27 2005
CITY MANAGER'S OFFICE
CITY OF BENICIA

December 23, 2005

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

ATTENTION: Michael Throne, Public Works Department

SUBJECT: Amendment No. Thirty-One to BCDC Permit No. 5-77

Ladies and Gentlemen:

Enclosed please find an original of amended BCDC Permit No. 5-77, stamped "BCDC Original," one stamped "Permittees' Copy," and one stamped "Recorder's Copy;" all executed by the Executive Director, incorporating the amendment requested in your letter dated December 20, 2005. In this amended permit, deleted language has been ~~struck through~~ and added language has been <u>underlined</u>.

I am issuing this amendment, which is included in the attached amended permit, on behalf of the Commission and upon the following findings and declarations:

1. This amendment to the permit is issued pursuant to Regulation Section 10822 upon the same criteria provided for the issuance of a non-material amendment to a major permit in that the project authorized by this amendment, the placement of riprap and construction of a variety of public access improvements, including paving a parking lot, a new ADA-accessible restroom, a public access path, and various other public access improvements at the First Street Peninsula, will not result in a material alteration of the authorized project for which the Executive Director may issue a permit, pursuant to Government Code Section 10920(d).

2. The amendment to the permit is consistent with the San Francisco Bay Plan and the McAteer-Petris Act because the proposed project will not adversely affect the Bay nor public access to and enjoyment of the Bay consistent with the project.

You must (1) **complete**, before a notary, the acknowledgment section of the amended permit stamped "BCDC Original," which indicates that you have read and that you understand all of the terms and conditions of the amended permit; and (2) **return** that entire executed "BCDC Original" to the Commission's office within the ten-day time period. Within thirty days, you must submit proof that the "Recorder's Copy" was recorded in Solano County to the

Commission's office. The copy stamped "Permittees' Copy" should be retained by you for your records along with the Notice of Completion and Declaration of Compliance form which you must return to the Commission upon project completion.

Furthermore, your amended permit contains special conditions which require you to take certain specific actions. Attached is a checklist to assist you in following the correct procedures. Please understand that **no** work may commence on the project until the amended permit stamped "BCDC Original" is executed and returned to us. Until the Commission receives the executed permit, the City of Benicia does not have the necessary authorization for the work authorized under the amended permit. The commencement of any work within the Commission's jurisdiction without the necessary authorization from the Commission is a violation of the McAteer-Petris Act and could subject you to a minimum fine of $1,000.00 to a maximum fine of $20,000.00 for each violation.

If you should have any questions regarding the amended permit or the procedure outlined above, please contact Brenda Goeden (415) 352-3623 or via email at brendag@bcdc.ca.gov of our staff.

WILL TRAVIS
Executive Director
San Francisco Bay Conservation
and Development Commission

By: _____
STEVEN A. McADAM
Deputy Director
for Permits and Technical Services

Enc.

WT/BG/mm

cc: Larch McNeill, Associate Planner, City of Benicia
Mike Alvarez, Director, Parks and Community Services, City of Benicia
Jim Erickson, City Manager

CHECKLIST
For Permit Compliance

Permit No.: 5-77, Amendment No. 31
Permittee: City of Benicia
Date Issued: December 23, 2005
Analyst: Brenda Goeden

PERMITTEE CHECKLIST

Within 10 Days of the Issuance of this Permit

- ☐ Return the executed Original permit to BCDC

Submittals Prior to the First Dredging Episode

- ☐ In-Bay Disposal written statement 45 days before dredging
- ☐ Water Quality Certification 45 days prior to episode
- ☐ Notify BCDC of Episode 7 days before dredging

(Your permit application satisfies the submittals required for the first dredging episode, provided that the dredging commences within a year of permit issuance.)

After the First Dredging Episode

- ☐ Submit Dredging Report within 30 days
- ☐ Submit Results of any testing specified by Regional Water Quality Control Board

Submittals Prior to the Second Dredging Episode (Episode 2):

- ☐ In-Bay Disposal written statement 45 days before dredging
- ☐ Water Quality Certification 45 days prior to episode
- ☐ Notify BCDC of Episode 7 days before dredging

After the Second Dredging Episode

- ☐ Submit Dredging Report within 30 days
- ☐ Submit results of any testing specified by Regional Water Quality Control Board

FOR BCDC USE

Received _____

Received _____

Received _____

Received _____

Received _____

Received _____

Received _____

Received _____

Received _____

Received _____

Received _____

Submittals Prior to the Third Dredging Episode (Episode 3):

- ☐ In-Bay Disposal written statement 45 days before dredging — Received _____
- ☐ Water Quality Certification 45 days prior to episode — Received _____
- ☐ Notify BCDC of Episode 7 days before dredging — Received _____

After the Third Dredging Episode

- ☐ Submit Dredging Report within 30 days — Received _____
- ☐ Submit results of any testing specified by Regional Water Quality Control Board — Received _____

Submittals Prior to the Fourth Dredging Episode (Episode 4):

- ☐ In-Bay Disposal written statement 45 days before dredging — Received _____
- ☐ Water Quality Certification 45 days prior to episode — Received _____
- ☐ Notify BCDC of Episode 7 days before dredging — Received _____

After the Fourth Dredging Episode

- ☐ Submit Dredging Report within 30 days — Received _____
- ☐ Submit results of any testing specified by Regional Water Quality Control Board — Received _____

Submittals Prior to the Fifth Dredging Episode (Episode 5):

- ☐ In-Bay Disposal written statement 45 days before dredging — Received _____
- ☐ Water Quality Certification 45 days prior to episode — Received _____
- ☐ Notify BCDC of Episode 7 days before dredging — Received _____

After the Fifth Dredging Episode

- ☐ Submit Dredging Report within 30 days — Received _____
- ☐ Submit results of any testing specified by Regional Water Quality Control Board — Received _____

Upon Completion of the Authorized Dredging

- ☐ Submit Notice of Completion — Received _____

Making San Francisco Bay Better

PERMIT NO. 5-77
(Issued on June 16, 1977, As
Amended Through December 23, 2005)
AMENDMENT NO. THIRTY-ONE
(Exclusive of Amendment Nos. Sixteen and Thirty)

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

ATTENTION: Michael Throne, Public Works Department

Ladies and 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 original permit had been issued. On December 1, 1977, the Executive Director of the Commission approved Amendment No. One to the permit, pursuant to Regulation Section 10822. On August 6, 1981, the Commission, by a vote of 18 affirmative, 0 negative, and 0 abstentions, approved Amendment No. Two. On May 20, 1982, the Commission, by a vote of 20 affirmative, 0 negative, and 0 abstentions, approved Amendment No. Three to the permit. Moreover, on July 7, 1982, April 30, 1984, October 7, 1986, July 6, 1989, June 29, 1990, March 17, 1992, June 6, 1992, October 29, 1992, April 14, 1993, June 9, 1993, July 15, 1993, March 21, 1994, April 16, 1996, March 24, 1997, October 6, 1997, February 17, 1998, March 30, 1999, December 13, 2000, March 7, 2001, August 17, 2001, April 19, 2002, November 26, 2002, July 24, 2003, ~~and~~ December 17, 2004, <u>and December 23, 2005</u>, the Executive Director of the Commission approved Amendment Nos. Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Seventeen, Eighteen, Nineteen, Twenty, Twenty-One, Twenty-Two, Twenty-Three, Twenty-Four, Twenty-Five, Twenty-Seven, Twenty-Eight, Twenty-Six, ~~and~~ Twenty-Nine, <u>and Thirty-One,</u> respectively, pursuant to Regulation Section 10822, 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 (Amendment No. One);

b. Construct an approximately 670-foot-long breakwater on each side of the marina access channel, covering approximately 2,800 square feet of water surface (Amendment No. One);

c. Construct, place, and use piles and floats covering approximately 80,050 square feet (1.9 acres) for 290 open berths and 33 end and side ties, a fuel/pumpout station and visitor dock, a public tie-up dock, a rental boat dock, and a traveling boat hoist, all in the 18-acre marina basin (Amendment Nos. Two, Six, and Seventeen);

d. Use the berthing facilities for not more than 323 small boats, of which a maximum of 32 (10%) berths may be used for live-aboards to provide security for the Benicia Marina. Houseboats are not authorized. (Amendment Nos. Two, Fourteen, and Seventeen);

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

f. Repair and replace, substantially in-kind, 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 access 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 (Amendment No. Two);

h. Construct two public access boardwalks with outlook platforms covering approximately 6,752 square feet of the restored tidal marsh authorized in Section I-A-2-a herein (Amendment No. Two);

i. Place a sand and gravel scour protection mat around the end of the marina breakwater covering approximately 1,900 square feet of the bottom of Carquinez Strait (Amendment No. One);

j. Perform 20,000 cubic yards or less of annual maintenance dredging within the Outer Channel, the Inner Channel, the fuel dock/basin area, and the berthing areas, as shown on the plan

titled "Condition Survey with Design Dredging Criteria," dated April 16, 1992, totaling no more than 60,000 cubic yards (Amendment No. Twelve and Eighteen--Completed);

k. Dispose of 20,000 cubic yards or less of dredged material annually at the federally-approved Carquinez Strait Disposal Site or at an approved upland or ocean disposal site (Amendment No. Twelve and Eighteen--Completed);

l. Construct a set of steps, covering approximately 375 square feet of riprapped shoreline, for public access from the First Street Promenade to the Bay (Amendment No. Thirteen);

m. Repair and maintain all improvements authorized herein, on an in-kind basis only, and consistent with plans and specifications approved by or on behalf of the Commission (Amendment No. Thirteen);

n. Reconfigure docks E3 and F1 to accommodate 22 open berths and 9 end and side ties, reducing the amount of Bay coverage by 4,000 square feet (Amendment No. Seventeen);

o. Extend the visitor dock by 1,300 square feet and construct a 270-square-foot landing ramp to the shore (Amendment No. Seventeen);

p. Dredge up to 40,000 cubic yards of sediment from the Benicia Marina during the first episode, an additional 60,000 cubic yards of sediment in subsequent episodes pending authorization by the San Francisco Bay Regional Water Quality Control Board, and dispose of the material at the federally-designated disposal site at Carquinez Strait (Amendment No. Twenty--Completed);

q. Dredge an additional 21,000 cubic yards of sediment from the inner and outer harbor, the turning basin, and the boat slips and berth area of the Benicia Marina, in addition to the 100,000 cy authorized by I-A-1-p, over the 15 months remaining in a 30-month authorization period that was extended (by Amendment No. Twenty-Three), and dispose of the spoils at the federally approved Carquinez Dredge Material Disposal Site (SF-09) (Amendment No. Twenty-Five--Completed);

r. Install an approximately 10-foot section of a 10-inch-in-diameter storm drain outfall pipe and a dissipater head, after-the-fact, in the slope of the northwest corner of the Benicia Marina basin, as a collapsed storm drain in the shoreline

band located immediately north of the outfall, to be replaced no later than December 30, 2006 by a permanent outfall that meets all of the requirements of the San Francisco Regional Water Quality Control Board (Amendment Nos. Twenty-Five and Twenty-Nine);

s. Dredge a total of 14,000 cubic yards of sediment from the inner and outer harbor, the turning basin, and the boat slips and berth area of the Benicia Marina, in addition to the 37,400 cubic yards of sediment remaining authorized under Amendment No. Twenty-Five, and dispose of the dredged material at the federally approved Carquinez Disposal Site (SF-9) (Amendment No. Twenty-Seven—Completed);

t. Excavate a total of 55 cubic yards of material from a 300-foot-long, 1,500-square-foot area of a drainage ditch running through an existing tidal marsh located at the end of East Second Street, a total of 2,700 square feet within the marsh will be impacted during construction, dispose of the excavated material at an upland location outside of BCDC's jurisdiction, and maintain the ditch clear of vegetation and sediment in perpetuity (Exhibit A) (Amendment No. Twenty-Eight);

u. Maintenance dredge up to 60,000 cubic yards of material per year for five years, for a total of 300,000 cubic yards, with disposal of all maintenance material at the Carquinez Disposal Site (SF-9), the Alcatraz Disposal Site (SF-11), at an approved upland location, or at a location outside the Commission's jurisdiction, and knock down approximately 1,000 cubic yards of mounded sediment per year for each of five years by dragging a beam along the sea floor (Amendment Nos. Twenty-Six and Thirty-One); and

v. Install shoreline riprap covering an approximately 3,050-square-foot area at the southwesterly tip of the First Street Peninsula (Amendment No. Twenty-Nine).

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 236 parking places, and 10 trailer parking spaces, and portions of access roadways in the shoreline band area covering approximately 179,000 square feet (Amendment Nos. Two and Nineteen);

d. Provide approximately 8,500 linear feet of continuous public access pathways, including bicycle paths, along the entire perimeter of the shoreline from Point Benicia to the marina spit (Amendment No. Two);

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 (Amendment No. Two);

f. Construct one-, two- and three-story buildings covering approximately no more than 113,050 square feet at ground floor level for commercial, office, restaurant, 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 and as further revised by the plan entitled, "Benicia Marina-Phase II, Planned Development Plan", prepared by Kaufman and Broad, and received by the Commission on January 7, 1997 (Amendment Nos. Two and Nineteen);

g. Construct six public restrooms (Amendment No. Two);

h. Landscape the public access areas;

i. Relocate an 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 (Amendment No. One);

j. Construct and landscape an approximately 57,900-square-foot marina green area at the northwest corner of the marina including paved plazas, walkways and other hardscape of approximately 23,300 square feet and landscaped green areas of approximately 34,600 square feet (Amendment Nos. Two and Nineteen);

k. Construct and landscape a park area at the west end of the marina spit of approximately 10,575 square feet (Amendment No. Two);

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);

m. Construct and use the First Street Promenade for public access including regrading and repaving First Street, constructing a 22-foot-wide, split-level sidewalk and seatwall, installing street trees, irrigation, and historic street lights, and replacing an approximately 300-foot-long concrete seawall with a steel, sheet pile seawall and ornamental guardrail (Amendment No. Thirteen);

n. Construct and landscape an approximately 17,300-square-foot East Park at the northeast corner of the marina including walkways and other hardscape areas of approximately 7,470 square feet and landscaped green areas of approximately 9,830 square feet (Amendment No. Nineteen);

o. Rehabilitate and restore the exterior of the historic Southern Pacific Depot including removing non-historic materials, upgrading the structure per the State Historic Building Code, installing a new roof, refurbishing the exterior finish, windows and doors, raising and leveling the building and the surrounding site and installing a new foundation system (Amendment No. Twenty-Two);

p. Repair and replace approximately 660 linear feet of an existing 8-foot-wide trail from the west end of the marina spit to East 5th Street by replacing the existing paving with new, all-weather paving and replace the existing, approximately five benches and three trash cans with new models and install two, new, informational slant boards. All improvements will result in a Bay Trail connection at the site (Amendment Twenty-Four);

q. Repair and maintain all improvements authorized herein, on an in-kind basis only, and consistent with plans and specifications approved by or on behalf of the Commission (Amendment No. Thirteen);

r. Install an approximately 80 foot section of 10-inch-in-diameter pipe, a new manhole, and a pump for a temporary storm drain outfall diversion, after-the-fact, underground in the northwesterly side of the Benicia Marina (Amendment No. Twenty-Five);

s. Place, grade, and maintain approximately 40 cubic yards of gravel in a parking lot located along East B Street at the end of East Second Street (Exhibit A) (Amendment No. Twenty-Eight); and

t. At the First Street Peninsula, remove two existing concrete pads, pave a 27,051-square-foot area for parking and pedestrian use, stripe up to 66 spaces (including three ADA-accessible spaces) for vehicles, construct a 501-square-foot ADA-accessible restroom at the northwesterly end of the peninsula, install a stormwater drain system with an in-line separator to remove oil and debris before discharge, develop a six-foot-wide perimeter path covering an approximately 8,150-square-foot area with lighting and interpretive signs, install approximately 7,200 square feet of landscaping, install a post and chain system to separate the pedestrian path from the parking lot, install new electrical conduit and lines to serve the restroom and lighting features, extend water service to the fish cleaning station on the pier, and install a fire plug (Amendment No. Twenty-Nine).

B. This amended authority is generally pursuant to and limited by the application filed on 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; the application for Amendment No. Two filed on 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 on 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 on July 1, 1982, including its accompanying exhibits; the application for Amendment No. Five filed on July 1, 1982, including its accompanying exhibits; your letter requesting Amendment No. Six, dated March 2, 1984; your letter requesting Amendment No. Seven, dated August 25, 1986; your letter requesting Amendment No. Eight, dated April 26, 1989; your letter requesting Amendment No. Nine, dated May 11, 1990; your letter dated March 5, 1992, requesting Amendment No. Ten; your letter dated April 21, 1992, requesting Amendment No. Eleven; your letter dated September 30, 1992, requesting Amendment No. Twelve; the application requesting Amendment No. Thirteen filed January 20, 1993; your letter dated February 24, 1993 requesting Amendment No. Fourteen; your letter dated April 2, 1993 requesting Amendment No. Fifteen; your letter dated December 13, 1993, requesting Amendment No. Seventeen; your letters dated August 22, 1995 and February 13, 1996, requesting Amendment No. Eighteen; your letter dated October 16, 1996, requesting Amendment No. Nineteen, your letter dated March 19, 1997, requesting Amendment No. Twenty; your letter dated January 23, 1998, requesting Amendment No. Twenty-One; your letter dated February 25, 1999, requesting Amendment No. Twenty-Two; your letter dated November 27, 2000 requesting Amendment No. Twenty-Three; your letter dated December 20, 2000, requesting Amendment No. Twenty-Four; your letter dated November 10, 1999 requesting

Amendment No. Twenty-Five, with additional information supplied in subsequent letters dated May 31, 2001 and July 30, 2001, your letter dated March 6, 2002 and your email correspondence dated March 27, 2002, requesting Amendment No. Twenty-Seven; your letter dated September 13, 2002 requesting Amendment No. Twenty-Eight; and your letter dated February 4, 2002 requesting Amendment No. Twenty-Six; ~~and~~ your letters dated March 25, 2004 and July 20, 2004, requesting Amendment No. Twenty-Nine, and your letter dated December 20, 2005, requesting Amendment No. Thirty, including all subsequent correspondence and accompanying exhibits, but subject to the modifications required by conditions hereto.

In a letter dated September 16, 1993, the permittee requested Amendment No. Sixteen to Permit No. 5-77, which, if granted, would have authorized a 28-month trial ferry service between Benicia and San Francisco. In a letter dated November 13, 1995, the permittee has temporarily withdrawn this request. After the initial request was made, Amendment No. Seventeen was granted. Similarly, Amendment No. Thirty-One was authorized before Amendment No. Thirty was issued due to the need to complete the dredging project in 2005. To prevent confusion that might result from re-numbering, amendments subsequent to Amendment No. Seventeen will be numbered sequentially, beginning with Amendment No. Eighteen.

C. This section of the amended permit, redrafted during the Amendment No. Twenty-Five authorization process, reformats and restructures the previous text of the permit but makes no substantive changes in the content or limitations of the original or previously amended permit.

Amendment No. Eighteen granted a ten-year time extension to the City of Benicia for the full development of the harbor at Benicia Point, until April 30, 2006, extending the permission previously granted to the City in an earlier amendment to the permit. Maintenance dredging authorized pursuant to paragraphs I-A-l-j and I-A-l-k (Amendment Nos. Twelve and Eighteen) was to commence no later than November 1, 1993, and be diligently pursued to completion by no later than May 1, 1997, unless an extension of time was granted by a further amendment. Amendment No. Twenty authorized maintenance dredging pursuant to paragraph I-A-1-p, to commence no later than May 1, 1998, and to be diligently pursued to completion by November 1, 2000, or within thirty months of commencement, unless an extension of time was granted by a further amendment of this amended permit. Amendment No. Twenty-One granted a time extension for the dredging activities, to be completed by November 1, 2000 or within thirty months of commencement. Amendment No. Twenty-Three granted a further extension of completion time for dredging authorized in item I-A-1-p, until December 31, 2002, or within thirty months of commencement of dredging, whichever was earlier.

Work authorized by Amendment No. Twenty-Four for the repair and replacement of certain public access improvements, must commence prior to March 15, 2002, and such work must also be diligently pursued to completion by no later than April 30, 2006, as required by Amendment No. Eighteen.

Amendment No. Twenty-Five authorizes, in part, an additional 21,000 cubic yards of sediment to be removed from the marina basin during maintenance dredging, in addition to the 100,000 cubic yards described in authorization section I-A-1-p, but exclusive of the 42,000 cubic yards already removed under that authorization in 1998-1999, and does not alter the time period for completing the dredging imposed by Amendment No. Twenty-Three.

Amendment No. Twenty-Five also authorizes, after-the-fact, the installation of a storm drain outfall in the northwesterly corner of the marina shoreline, and ~~is~~ was issued upon the completion of the initial requirements imposed by the San Francisco Regional Water Quality Board's Clean-up and Abatement Order, issued on March 15, 2000. Upon request of BCDC staff, the Board issued an Amended Order, dated February 1, 2001, requiring the City to develop a work plan and time schedule for a permanent storm drain outfall, to be submitted to the Board no later than November 1, 2001, which is the subject of Special Condition II-A-10, herein. Amendment No. Twenty-Nine extends the period of time by which the storm drain outfall will be installed to December 30, 2006.

Amendment No. Twenty-Seven authorizes an additional 14,000 cy of sediment, for a total of 51,400 cy, to be removed under Benicia Marina Maintenance Dredging Episode 3. 41,600 cy has already been removed from the 79,800 cy authorized in Amendment No. Twenty-Five.

Work authorized in Amendment No. Twenty-Eight, removing of 55 cubic yards of material from a drainage ditch and placing and grading gravel within the parking lot, must commence prior to February 1, 2004, and be completed by February 1, 2005. Amendment No. Twenty-Eight also authorizes the City to routinely maintain the ditch, keeping it free of vegetation and accumulated sediment in perpetuity.

Amendment No. Twenty-Six authorizes maintenance dredging of a total of 300,000 cubic yards over five years and associated knockdown episodes of approximately 1,000 cubic yards per year. The work authorized in Amendment No. Twenty-Six must commence prior to November 30, 2003, and be completed within five years of commencement, or by November 30, 2008, whichever is earlier.

Work authorized in Amendment No. Twenty-Nine, which authorizes a variety of improvements at the First Street Peninsula, must commence prior to December 1, 2007 and be completed within two years of commencement or by December 1, 2009, whichever is earlier, unless an extension of time is granted through further amendment of this amended permit.

Work authorized in Amendment No. Thirty-One allows disposal of dredged material at the Alcatraz Disposal Site and establishes a work window (Amendment No. Thirty-One).

D. The project, as amended, will result in the creation of approximately 18 acres of new Bay surface within the new marina basin and the restoration of approximately 18.6 acres of a degraded and filled tidal marsh. In addition, the project, will result in a total of 2.23 acres of fill for boat berths, breakwaters, fishing piers, access boardwalks, and approximately 0.07 acres (3,050 square feet) of fill for shoreline protection. The net increase in the Bay as a result of this project will be approximately 34.44 acres. New and/or improved public access will be provided along approximately 9,800 linear feet of Bay shoreline.

II. Special Conditions

The authorization herein, as amended, 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 herein, until final precise site, engineering, grading, architectural, landscaping, riprap, and live-aboard 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 (no final plan review is required for Amendment No. Twenty-Four, as outlined in Special Condition II-A-9, below or for the First Street Peninsula improvements authorized under Amendment No. Twenty-Nine, provided that such improvements are constructed in general conformance with the plans entitled "First Street Peninsula Improvement," prepared by Cullen-Sherry and Associates in 2004). The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings (Amendment Nos. Two and Twenty-Nine).

   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 (Amendment No. Two).

   b. **Site and Landscaping Plans.** Site and landscaping plans shall include and clearly label the mean high tide line, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, fences, paths, trash containers, utilities and other proposed improvements.

   c. **Engineering Plan.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:

      (1) Evidence that the design complies with all applicable codes; and

(2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

d. **Riprap Plans.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein. Shoreline protection plans shall include the appropriate diagrams and crosssections that show and clearly label the 6.1-foot contour line above Mean Sea Level (the line of highest tidal action), property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used, indicates who designed the shoreline protection improvements and their background in coastal engineering and familiarity with the Commission's concerns.

e. **Live-Aboard Plans.** Live-Aboard Plans shall specifically show all facilities required herein for live-aboard use and the location and distribution of each live-aboard boat berth. Within ten days of any change in the location, use or ownership of any live-aboard boat or other vessel used for residential purpose, the permittee shall submit a revised plan showing and describing the change.

2. **Basis for Approval.** 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 and accuracy of the plans in showing the features required above, particularly the line of highest tidal action, property lines, and the line 100 feet inland of the line of highest tidal action, and any other criteria required by this amended permit; (b) consistency of the plans with the terms and conditions of this amended permit; (c) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this amended permit; (d) consistency with legal instruments reserving public access and open space areas as required in Special Condition II-G; (e) assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials and placement as required in Special Condition II-B; (f) consistency of the plans with the recommendations of the Design Review Board; (g) consistency of the plans with the recommendations of the Engineering Criteria Review Board; and (h) assuring that appropriate provisions have been incorporated for safety in case of seismic events.

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 (Amendment No. Two).

3. **Changes of 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 plans have been submitted for approval and shall be based on a finding that the change complies with the amended permit, and would not detrimentally affect public access, landscaping, open space, open water, or other public benefits (Amendment No. Two).

4. **Conformity with Final Approved Plans.** All leases, contract specifications, structures, improvements and uses authorized herein shall conform to the final plans approved pursuant to this condition. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any structure, or to any improvements authorized or required herein without first obtaining written approval by or on behalf of the Commission pursuant to Special Condition II-A-2 (Amendment No. Two).

5. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and special conditions of this authorization or legal instruments approved pursuant to this amended permit, the special condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the special conditions of this amended permit and any legal instruments submitted pursuant to this amended permit.

6. **Construction of First Street Improvements.** The improvements authorized in Amendment No. Thirteen shall be built in substantial conformance with the plan entitled "First Street Plan, Benicia Water-front," prepared by Roma Architects and Planners, and dated July 31, 1992.

7. **Construction of Benicia Marina, Phase II Townhomes.** The improvements authorized in Amendment No. Nineteen shall be built in substantial conformance with the plan entitled "Benicia Marina-Phase II, Planned Development Plan", prepared by Kaufman and Broad and received by the Commission on January 7, 1997, and as more specifically approved pursuant to Special Condition II-A-1 herein (Amendment No. Nineteen).

8. **Rehabilitation and Restoration of Southern Pacific Depot.** The improvements authorized in Amendment No. Twenty-Two shall be completed in substantial conformance with the plan entitled "Benicia S.P. Depot Restoration Project," sheets A0.1-A3.1, A6.1-A6.2, C1.1-C1.2, S1.1-S5.4, prepared by the City of Benicia Public Works Department, dated January 25, 1999, and received by the Commission on March 2, 1999, and the plan entitled "Restoration of S.P. Railroad Depot, City of Benicia, Temporary Relocation and BCDC Jurisdiction," prepared by Cullen Engineering Associates, Inc., dated February 1999, and received by the Commission on March 24, 1999.

9. **Bay Trail Improvements.** No final plan review approval is required for the trail improvements between the west end of the Benicia Marina and East 5th Street. However, the improvements authorized under Amendment No. Twenty-Four shall be completed in substantial conformance with the plans entitled "Benicia Bay Trail Access, Benicia Marina," sheets 1-3, dated October 10, 2000, and prepared by Singer and Hodges, Inc.

10. **Marina Basin Water Quality Improvements.** The permittee shall submit all plans for a permanent storm drain outfall for the Marina Area Storm Drain System, as required by the San Francisco Water Quality Control Board's Amended Clean Up and Abatement Order, dated February 1, 2001, to the Commission and shall apply for a new authorization for that work, in keeping with the time table established by the Board's existing or subsequent requirements. Due to potential impacts to marshes and fisheries in the Bay, the permittee shall install the permanent storm drain outfall system no later than December 30, 2006. The permittee shall also report to the Commission, upon request, that it is in full compliance with the Board's requirements for interim restriction on dry-season storm drain discharge into the marina basin. (Amendment Nos. Twenty-Five and Twenty-Nine).

11. Work authorized in Amendment No. Twenty-Eight must be conducted in general conformance with the plan entitled "Ditch Maintenance-East 2 and B Streets," Dated September 2002, as shown in Exhibit A to this amended permit.

12. Work authorized in Amendment No. Twenty-Nine, the improvements at First Street Peninsula, must be conducted in general conformance with the plans entitled "First Street Peninsula Improvement" prepared by Cullen-Sherry & Associates, Inc. in 2004.

B. **Shoreline Protection**

1. **Riprap Material.** Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited.

2. **Riprap Placement.** Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site.

3. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense, of the permittee, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff.

C. **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 jurisdiction, the permittee shall provide any private developers with a copy of (1) this amended permit, calling the developers 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 (Amendment No. Two).

D. **Adoption of Ordinances.** This amended permit 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.

E. **Marina and Live-Aboard Requirements**

1. **Permittee's Responsibility to Enforce.** The permittee shall permanently, continuously and fully enforce, through lease provisions, monitoring, notices, education and other appropriate measures, all requirements imposed by Special Condition II-E herein.

2. **Live-Aboard Use**

   a. **Number and Distribution.** The permittee may allow no more than 32 live-aboard boats within the marina basin and other water covered areas of the Benicia Marina. Such vessels are allowed only for the purpose of providing added security for all boat owners, users, and the public. The live-aboard boats shall be distributed throughout the marina in a manner that will provide the greatest security.

   b. **Live-Aboard Berthing Information.** Within six months of the issuance of Amendment No. Fourteen, the permittee shall submit for review and approval by or on behalf of the Commission, a plan showing the specific location of each live-aboard vessel, the name of the vessel, the DMV registration of the vessel, a description of the waste handling facilities on the vessel, the name(s), address(es), telephone number(s) of the owner(s) of the vessel and, if the occupant is other than the owner, the name(s), address(es) and telephone number(s) of the occupants of the live-aboard or vessel. If the occupant(s) regularly use a motor vehicle, the plan shall indicate where the vehicle is normally parked when live-aboard boat or other vessel used for residential purposes is occupied. Within ten days of any change in the location, use or ownership of any live-aboard boat or other vessel used for residential purposes, the permittee shall submit a revised plan showing and describing the change.

   c. **Houseboats.** No houseboats shall be moored at the Benicia Marina.

3. **Taking Requested Action/Terminating Unauthorized Live-Aboard Use**

   a. **Taking Requested Action.** After issuance of this amended authorization, the Executive Director may notify the permittee of other measures he or she deems necessary to assure that the requirements of Condition II-E are satisfied. Such measures

may include termination of an unauthorized live-aboard use. The permittee shall implement such measures within 30 days of receiving written notification from the Executive Director to do so, unless the permittee appeals the directive to the Commission. The appeal shall be in the form of a letter to the Executive Director. The letter shall explain the reasons for the appeal and include facts and materials the applicant believes are relevant to the appeal. The applicant must submit the letter of appeal within ten (10) working days of receiving the written notification from the Executive Director to take the directed measures. The Executive Director shall schedule the appeal for hearing and vote by the Commission as soon as practicable following the receipt of the permittee's appeal letter. The Commission shall by a majority vote of those present and those voting determine whether to impose the directive made by the Executive Director or not. If the Commission votes to impose the Executive Directors directive, the permittee shall implement such measures within 30 days of the Commission's vote. If the Commission votes not to impose the Executive Director's directive, the Commission may direct the permittee to take any alternative measures the Commission deems appropriate to assure that the requirements of Condition II-E are satisfied, and the permittee shall implement such measures within 30 days of the Commission's action on the appeal or within any other time period specified by the Commission.

b. **Termination of Authorized Live-Aboard Use.** The Executive Director may at any time after issuance of this amended authorization require the permittee to terminate a specified or all live-aboard use at the marina authorized herein. The permittee acknowledges that residential use of San Francisco Bay is impermissible and may only be allowed when the security of the marina would be enhanced by allowing some level of live-aboard use, when that level of use can be accommodated with adequate parking and other facilities for residential uses, when special provisions are made to handle wastes, and when live-aboard use can be made compatible with navigation, recreational boating, and public access which are predominate and uses that are preferred in the Bay Plan and the Commission's law. The permittee shall terminate the live-aboard use within three months of receiving written notification from the Executive Director to do so, unless the permittee appeals the directive to the Commission. The appeal shall be in the form of a letter to the Executive Director. The letter shall explain the reasons for the appeal and include facts and materials the applicant believes are relevant to the appeal. The applicant must submit the letter of appeal within

ten (10) working days of receiving the written notification from the Executive Director to take the directed measures. The Executive Director shall schedule the appeal for hearing and voted by the Commission as soon as practicable following receipt of the permittee's appeal letter. The Commission shall by a majority of vote of those present and voting determine whether to require termination of the live-aboard use or not. If the Commission votes to require termination of the live-aboard use, the permittee shall terminate the live-aboard use within 3 months of the Commission's vote or within any other time period specified by the Commission.

4. **Annual Security Report.** Beginning on July 1, 1994, and each year thereafter for so long as the live-aboard or other residential use occurs at the marina, the permittee shall submit a report of the activities associated with live-aboard use. Such report shall provide the following information:

   a. A description of each breach of security at or near the marina, such as thefts, assaults and similar crimes, whether the event was reported to the Benicia Police Department and what involvement, if any, any occupant or owner of a live-aboard boat had concerning the event.

   b. A comparison of the level of public safety that is provided after live-aboard use with the last year previous to formally commencing live-aboard use.

   c. A certification that the 236 parking spaces and 10 trailer parking spaces, required pursuant to Special Condition II-E-6-d, are adequate to meet the needs of live-aboards, boaters, guests, and the public and that assigned live-aboard parking is not necessary.

5. **Contracting for Berthing Space**

   a. **Notice.** Prior to the use of any live-aboard berth, the permittee shall notify by letter all parties leasing berths or otherwise having rights to berths at the marina that the Commission has authorized only 32 live-aboard vessels at the Benicia Marina and that live-aboard use other than for the 32 berths so authorized is in violation of the permit and shall cease immediately.

   b. **Live-Aboard Berth Agreement.** Prior to the use of any berth for live-aboards, the permittee shall prepare a draft of a proposed agreement and submit the draft for review and approval or disapproval by or on behalf of the Commission. In

addition to the normal terms of such agreements, the permittee shall specifically include either verbatim or by reference and exhibit Condition II-E of this amended permit and shall limit live-aboard use to a month-to-month basis. The permittee shall also include rights of termination based on the terms of Condition II-E. The draft agreement shall be reviewed and approved or disapproved within 45 days of submittal based on the draft agreement providing adequate notice of the terms of live-aboard use set out in this permit, assuring that parking is adequately provided for live-aboard users, agreement by berth users to provide services to improve security at the marina and to comply with all terms and conditions of Condition II-E. After approval of the draft agreement, the permittee shall use the approved agreement, and no other, in contracting with others for live-aboard space at the marina. The permittee shall submit to BCDC a copy of all agreements contracting for live-aboard space after they have been executed by all parties to the agreement.

c. **Other Berthing Agreements.** In agreements that the permittee uses to provide space for recreational boat use, the permittee shall prohibit live-aboard or other residential use aboard all such vessels and shall assure that the requirements of Condition II-E are made available to the user and the violation of any term of Condition II-E shall be a basis for the permittee to terminate the berthing agreement.

6. **Onshore Live-Aboard and Marina Facilities.** Prior to the use of any berth for live-aboards the permittee shall provide and maintain the following improvements and facilities for live-aboards boats and other marina users:

a. **Restrooms.** The permittee shall provide and maintain in good and operable condition five restrooms with a total of 17 toilets/urinals for the use of live-aboard users, boaters, guests, and the public. All such restrooms shall be connected to a shoreside sewer system, contain fully operable facilities, be free of charge and available at all hours to live-aboard users, boaters, and their guests (Amendment No. Nineteen).

b. **Showers.** The permittee shall provide and maintain in good and operable condition four sets of showers with a total of 18 showers for the use of live-aboard users, boaters, and guests. All such showers shall be connected to a shoreside sewer system, be free of charge and available at all hours to live-aboards, boaters, and their guests (Amendment No. Nineteen).

c. **Refuse Service.** The permittee shall provide, and maintain in serviceable condition, four enclosed garbage dumpsters for live-aboard users, boaters, and guests. All such facilities shall be emptied regularly and disposed of at an appropriate and approved solid waste disposal site;

d. **Live-Aboard and Marina Parking.** The permittee shall provide and maintain a minimum of 236 parking spaces and 10 trailer parking spaces for marina, live-aboard and public access use;

e. **Bicycle Facilities.** The permittee shall provide and maintain a minimum of three bicycle parking racks for live-aboard users, boaters, guests and the public. One rack shall be appropriately located to serve Docks A and B, one to serve Docks C and D, and one to serve Docks E and F;

f. **Mail/Newspaper Facilities.** The permittee shall allow live-aboards to receive and pickup mail and newspapers at the Marina office; and

g. **Disabled Accessibility.** All live-aboard and marina facilities required herein shall be constructed and maintained consistent with local, state, and federal handicap accessibility laws including, but not limited to, the Americans with Disabilities Act.

7. **Water Quality Requirements**

a. **Waste Discharge.** The discharge of any solid or liquid wastes, including sewage, graywater, oily bilge water, or waste oil, into the Bay within the marina basin shall be in accordance with federal and state regulations. This restriction shall not apply to the discharge of liquid wastes associated with the use of an automatic bilge pump (Amendment No. Twenty-Nine).

b. **Bilge Water and Oily Wastes.** Depositing any bilge water or other oily wastes in the waters of the Bay is strictly prohibited. The permittee shall specifically include a term in all berthing rental agreements providing for the immediate termination of the use of any berth by the owner of a vessel from which oily wastes or bilge water has been deposited in the Bay. The permittee shall install a facility for receiving and disposing of oily wastes and bilge water that conforms to all applicable codes, regulations, requirements, and advice of the staffs of the Regional Water Quality Control Board and the United States Coast Guard. Such disposal facilities shall be maintained in a safe and sanitary manner, available free of charge to persons renting or using berths within the marina, emptied regularly, and the materials from the facilities

disposed of in accordance with the rules and regulations of the Regional Water Quality Control Board and the Environmental Protection Agency.

c. **Receipt of Boat Sewage.** The permittee shall install and maintain in operating condition at all times adequate convenience facilities for the pumping out of boat holding tanks and the disposal of sewage from portable toilets into shoreside sewers. The permittee shall assure that renters and users are encouraged to dispose of sewage in such facilities. The permittee may impose a fee for the use of the convenience facilities, provided that any such fee is reasonable and related to the actual cost of operating the facilities. The Commission specifically reserves the right, in the event of repeated or serious problems with dumping sewage from boats into the Bay within the Benicia Marina, to require that individual shoreside sewer connections be provided at the expense of the permittee for each boat mooring in the marina. The permittee shall, by provisions in each lease or rental agreement, reserve the right to require each boat in the marina be connected to such shoreline sewer whenever moored in the marina in the event the Commission shall impose this requirement at some future time.

d. **Marine Toilets.** The permittee shall make it a requirement of the use or occupancy of any berth that any vessel that is equipped with a marine toilet, shall contain an adequate holding tank, incinerator, recirculation device, or other equivalent device approved by applicable agencies to preclude discharge of wastes into the waters of the Benicia Marina, or have the marine toilet rendered inoperable while any such vessel is moored in the marina, and any violation of the waste discharge requirements of this authorization shall be cause for immediate cancellation of the right of such use or occupancy. The permittee shall provide adequate policing to ensure that marine toilets of boats without holding tanks or equivalent devices are, in fact, rendered inoperable at all times when the boats are berthed.

8. **Construction.** Construction standards for marina berths and associated facilities shall be at least equal to those established by the State Department of Boating and Waterways. All construction operations shall be performed to minimize roiling of the water and to prevent debris from drifting and presenting either a pollution or navigation hazard.

9. **Boat Hoists.** At least one boat hoist shall be a small sling hoist or otherwise appropriately designed 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 and maintained for public use 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 (Amendment No. Two).

10. **Acquisition of Marina Berths.** The City of Benicia, regardless of any subsequent lease or assignment of all or part of this amended permit, 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 (Amendment No. Two).

11. **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 (Amendment No. Five).

F. **Marsh Restoration**

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-2-a, 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 Ralph 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.

G. **Public Access**

1. **Area.** Until this amended permit 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, connections from public streets to the public access area as generally shown on the plans entitled "Old Capitol Marina, Master Plan," revised July 28, 1981, by Ralph Alexander Associates, Landscape Architecture (Amendment No. Two), as generally increased by the plan entitled "Increased Setback Open Area Plan," dated May 12, 1982, by Ralph Alexander Associates (Amendment No. Three), revised by the plan entitled "First Street Plan," dated July 31, 1992, prepared by Roma Architects and Planners (Amendment No. Thirteen), as further revised by the plan entitled, "Benicia Marina-Phase II, Planned Development Plan", prepared by Kaufman and Broad and received by the Commission on January 7, 1997, in the plans entitled "First Street Peninsula Improvement" prepared by Cullen-Sherry and Associates, Inc., in 2004, as authorized in Amendment No. Twenty-Nine, open to the public free of charge for walking, viewing, sitting, picnicking, fishing, bicycling and related purposes. 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 reason-able 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 or revised 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 required under Special Condition II-G-1, the mean high tide line, 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 amended permit become effective until the instruments have been approved as provided herein (Amendment No. Two and Amendment No. Nineteen).

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, revised by the plan entitled "First Street Plan," dated July 31, 1992, by Roma Architects and Planners (Amendment No. Thirteen), further revised by the plan entitled, "Benicia Marina-Phase II, Planned Development Plan", prepared by Kaufman and Broad and received by the Commission on January 7, 1997 (Amendment No. Nineteen) and in the plans entitled "First Street Peninsula Improvement" prepared by Cullen-Sherry and Associates, Inc., in 2004, as authorized in Amendment No. Twenty-Nine. The public access improvements, with the exception of any elements previously reviewed and approved including the improvements at the First Street Peninsula authorized in Amendment No. Twenty-Nine, shall be reviewed and approved in accordance with Special Condition II-A-1, shall be consistent with the recommendations of the Commission's Design Review Board, and shall include, but are not limited to, the following:

   a. A six-foot-wide continuous, all-weather pedestrian pathway around the entire perimeter shoreline of Point Benicia, the marsh, the marina basin and the marina spit. The pedestrian path shall be separated from the bicycle path by landscaping or bollards where the paths join, except in plazas. A portion of this pathway, from the west end of the marina spit to East 5th Street, shall be widened to eight feet in width to provide a connection to the Bay Trail (Amendment No. Twenty-Four).

   b. A six-foot-wide continuous, all-weather bicycle pathway around the entire perimeter shoreline approximately paralleling the pedestrian path required in Special Condition II-G-3-a.

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

d. Two small boardwalks into the marsh as shown on the "Old Capitol Marina Master Plan."

e. Benches, trash containers and lighting shall be placed along the entire public access 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. A minimum of 20 public access and 10 public parking signs at appropriate locations and of a size and design approved pursuant to Special Condition II-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.

i. The First Street promenade, including a 22-foot-wide, split-level sidewalk and seatwall, street trees, irrigation, trash containers, historic street lights, and access steps to the Bay (Amendment No. Thirteen).

j. The Benicia Marina, Phase II Townhomes public access improvements, as generally shown on the plan entitled, "Benicia Marina-Phase II, Planned Development Plan," including an approximately 57,900-square-foot Marina Green the approximately 17,300 square foot East Park, an approximately 35,000 square-foot and landscaped waterfront trail, walkway connections from each of the public parking lots, and seven wooden overlooks. The Marina Green plaza shall also include nine-foot-high trellises as generally shown in the original application (Amendment No. Nineteen).

k. At the First Street Peninsula, a paved 27,051-square-foot area for parking and pedestrian use, a 501-square-foot ADA-accessible restroom, a six-foot-wide perimeter path covering an approximately 8,150-square-foot area with lighting and interpretive signs, 7,200 square feet of landscaping, and a post and chain separation barrier separating the perimeter pedestrian path from the parking lot (Amendment No. Twenty-Nine).

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* and as generally shown in the Benicia Urban Waterfront Restoration Plan (Amendment No. Thirteen).

b. **Public Access Improvements-General.** Prior to the use of any buildings authorized herein, the adjacent public access improvements shall be completed, with the exceptions provided below (Amendment No. Two).

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.** Prior to the use of any marina berth, interim landscaping and public access improvements shall be completed along the shoreline of "B" 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 marina spit shall be completed, excluding the end of the marina spit. Public access improvements and landscaping along the end of the marina spit shall be completed by May 1, 1990 (Amendment No. Eight).

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 consistent 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 public access areas and improvements required by Special Condition II-G, including, but not limited to, 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, but is not limited to, 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 (Amendment No. Two).

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, the areas open 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 the area; so that the permittee or the permittee's successors in interest will require further action by or on behalf of the Commission prior to any future change of use or work within areas filled pursuant to this amended permit.

I. **Dredging Requirements**

1. **Water Quality Certification.** At least 45 days prior to the commencement of any dredging episode authorized herein, the permittee shall submit to the Executive Director water quality certification from the California Regional Water Quality Control Board, San Francisco Bay Region, for that episode. Failure to obtain such certification prior to the commencement of the dredging episode shall terminate the Commission's authorization for that dredging episode. The Executive Director may upon review of the Regional Board approval either (a) approve the dredging episode(s) consistent with this authorization, or (b) amend the Commission approval to modify existing or include additional conditions related to water quality. If the Executive Director amends the permit to change or add permit conditions, this permit shall become null and void unless the permittee agrees to amend this authorization in a manner specified by or on behalf of the Commission (Amendment Nos. Twenty-Five and Twenty-Six).

2. **Five-Year Permit for Dredging.** The 300,000 cubic yards of maintenance dredging authorized by Amendment No. Twenty-Six shall be completed within five-years of the commencement of dredging or by November 30, 2008. No further dredging is authorized by this permit (Amendment No. Twenty-Six).

3. **Limits on Dredging.** This amended permit authorizes maintenance dredging and knockdown activities only. No new dredging is authorized. This amended permit authorizes dredging and knock-downs within area(s) and depths shown in the final exhibits submitted with your amendment request. No dredging in other areas is authorized (Amendment Nos. Twenty-Five and Twenty-Six).

4. **Dredging Report**

   a. **Prior Notice of Episode.** The permittee shall notify the staff by telephone or in writing at least seven days prior to undertaking any dredging episode. The permittee shall permit the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with the dredging or disposal episode and observe the operation to ensure that the dredging or disposal activity is consistent with the dredging report required herein and the other terms and conditions of this amended permit.

   b. **Dredging Report.** Within 30 days of completion of each dredging episode of the maintenance dredging authorized by this amended permit, the permittee shall submit to the Commission a report which contains: (1) a bathymetric map showing the location of all areas authorized to be dredged and to what depth; (2) a bathymetric map showing the actual areas dredged and to what depth, and any dredging that occurred outside the area authorized to be dredged or below the depths authorized to be dredged shall be depicted graphically on the map; (3) a vicinity map showing the disposal site; and (4) the calculated volume of the actual material dredged or disposed. The Commission reserves the right to have such report inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of the report. If a third party selected by or on behalf of the Commission indicates that the report is inaccurate, the Commission reserves the right to require the permittee to submit a revised report that meets the requirements of this condition. If the Commission determines that the contents of the dredging report indicates that work has occurred beyond that authorized by the amended permit, such violation may result in the initiation of enforcement action by or on behalf of the Commission (Amendment No. Twenty-Six).

5. **Barge Overflow Sampling and Testing.** Results of any effluent water quality or other testing required by the San Francisco Bay Regional Water Quality Control Board shall be submitted in writing to the Commission's office at the same time that such testing is submitted to the Regional Board (Amendment Nos. Twenty-Five and Twenty-Six).

6. **In-Bay Disposal.** At least 45 days prior to the commencement of any disposal episode authorized herein, the permittee shall submit a written statement to the Executive Director that contains all of the following: (a) the dates within which the dredging and disposal episode is proposed; (b) the total volume of material proposed to be dredged and location of the proposed disposal in the Bay; (c) an explanation as to why ocean or upland disposal of the material is infeasible; and (d) an explanation as to how the proposed disposal is consistent with the U. S. Army Corps of Engineers' management of the disposal site so as to maintain adequate disposal site capacity. The authorization for the dredging and disposal episode shall become effective only when either: (b) the Executive Director informs the permittee in writing that he or she has determined that the episode is consistent with the authorization provided herein, that there is no feasible upland alternative available for the dredged material, and that sufficient capacity exists at the disposal site consistent with the long-term maintenance of the disposal site; or (b) the Executive Director does not respond to the permittee's written statement within 30 days of its receipt. If the Executive Director determines that ocean or upland disposal of the material is feasible or the U. S. Army Corps of Engineers indicates that the proposed disposal is inconsistent with the corps' management of the disposal site so as to maintain adequate disposal site capacity, such determination shall terminate the Commission's authorization for in-Bay disposal as part of that dredging episode (Amendment Nos. Twelve and Twenty-Six).

J. **Knockdown Dredging.** Knockdown dredging, or underwater grading of shoals, is an activity proposed by the City of Benicia (City) to remedy high spots within the marina without the mobilization of a full dredging and disposal episode. The knockdown episodes proposed in this permit must meet the following conditions; (1) the shoal must be located within the maintenance dredging footprint for the marina; (2) the depression into which the shoal will be knocked must be located within the maintenance dredging footprint of the marina; (3) each shoal to be knocked down must be no greater than 2,500 cubic yards; (4) the City must use a towed I-beam to knock down the shoal into the depression; (5) each knockdown episode must be conducted to minimize the re-suspension of sediment; (6) the knockdown material must meet chemical and biological criteria specified by Regional Water Board and/or BCDC before being knocked down; (7) the City must meet the knockdown dredging episode notification requirements in Special Condition B (below) (Amendment No. Twenty-Six).

K. **Knockdown Dredging Episode Notification**

1. **Prior Notice of Knockdown Episode.** The City shall notify the staff by telephone or in writing at least seven (7) days prior to undertaking any knockdown dredging episode. At this time, the City must also confer with BCDC and the Regional Water Board as to whether any testing for this knockdown material is required, and must submit a description of the project and a pre-dredge hydrosurvey of the knockdown area. The City shall permit the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with the knockdown dredging episode and observe the operation to ensure that the knockdown dredging activity is consistent with the dredging report required herein and the other terms and conditions of this amended permit.

2. **Approval of Knockdown Episode.** Approval (by letter or email) from the Commission's staff authorizing each individual knockdown episode will be required before a knockdown episode may commence. Please be advised that consultation and subsequent approval may be required from appropriate resource agencies before a knockdown episode may commence if the knockdown episode falls within a LTMS restricted period for the area.

3. **Knockdown Dredging Report.** Within thirty (30) days of completion of each knockdown dredging episode authorized by this permit, the City shall submit to the Commission a report which contains: (1) a post-dredge hydrosurvey showing (a) the location of all areas authorized to be knocked-down and the authorized depth based on Mean Lower Low Water (MLLW); and (b) the actual areas, and the depth after completion of the knockdown episode based on MLLW, and any knockdown activity that occurred outside the area authorized to be knocked-down or below the authorized depths; and (2) the actual volume of the material relocated in the knockdown episode. The Commission reserves the right to have such report inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of the report. If a third party selected by or on behalf of the Commission indicates that the report is inaccurate, the Commission reserves the right to require the City to submit a revised report that meets the requirements of this condition. If the Commission determines that the contents of the dredging report indicate that work has occurred beyond that authorized by the permit, such violation may result in the initiation of enforcement action by or on behalf of the Commission (Amendment No. Twenty-Six).

L. **Long-Term Management Strategy Program (LTMS).** If, at any time during the effective life of this amended permit, the Commission's laws, Bay Plan policies, or regulations are changed in regards to dredging and dredged material disposal and beneficial reuse, pursuant to the findings and policies developed through the multi-agency Long Term Management Strategy

Program (LTMS), this permit shall become null and void unless the permittee agrees to amend this authorization to meet the new laws, policies, or regulations in a manner specified by or on behalf of the Commission after such changes in the Commission's laws policies, or regulations have become effective (Amendment Nos. Twenty-Five and Twenty-Six).

M. **Seasonal Limitations.** ~~No work inconsistent with the time and location limits contained in Tables F-1 and F-2 of Appendix F, "In-Bay Disposal and Dredging" to the Long-Term Management Strategy (LTMS) Management Plan may be conducted without the approval of the Executive Director, provided that such approval may only be issued (1) after consultation between the US Army Corps of Engineers and the U.S. Fish and Wildlife Service and/or NOAA Fisheries and/ or consultation between the City of Benicia and the California Department of Fish and Game has occurred; and (2) the Executive Director has determined that dredging and disposal outside of the work window will be consistent with the Commission's laws and policies.~~ Per the U. S. Fish and Wildlife Service's consultation dated August 29, 2003, the work window for this project is provided below, all dredging and disposal activities shall be confined to the work window, between June 1st and November 30th of any year, to minimize disturbance to the following endangered and special status species:

Species of Concern	Work Window Period	Consulting Agency
SteelheadTrout	June 1st to November 30th	NOAA
Chinook Salmon	June 1st to November 30th	NOAA
Delta Smelt	June 1st to November 30th	FWS

CDFG-California Department of Fish and Game; NOAA-NOAA Fisheries, FWS—U.S. Fish and Wildlife Service

This work window between June 1st and November 30th is consistent with Tables F-1 and F-2 of Appendix F, "In-Bay Disposal and Dredging" and Figures 3.2 and 3.3 of the Long-Term Management Strategy (LTMS) Management Plan 2001 and the results of FWS consultation. No work inconsistent with the time and location limits contained in these tables may be conducted without the approval of the Executive Director, provided that such approval may only be issued after (1) consultation between the U. S. Army Corps of Engineers and the U. S. Fish and Wildlife Service and/or NOAA Fisheries has occurred; and (2) the Executive Director has determined that dredging and disposal outside of the work window will be consistent with the Commission's laws and policies.

Further, for 2005 only, the City of Benicia is approved to complete 1,500 cy of dredging within the marina boundaries only (excluding the entrance channel due to lease restrictions), through December 31, 2005 (Amendment No. Thirty-One).

N. **Recording.** The permittee shall record this document or a notice specifically referring to this document with Solano County within 30 days after execution of the amended permit issued pursuant to this amended permit and shall, within 30 days after recordation, provide evidence of recordation to the Commission.

O. **Submittal of Property Documents to Reflect Settlement with Respect to Public Trust Lands (Amendment No. Eighteen)**

1. **Settlement Agreement.** Within ten days of execution of a final settlement between the State Lands Commission and the City of Benicia with respect to public trust lands that partially underlie the project site, as approved by the State Lands Commission on March 1, 1995, the permittee shall submit a copy of such final agreement to the Commission.

2. **Conveyances.** Within ten days of recordation with Solano County, the permittee shall submit to the Commission copies of all recorded conveyances executed pursuant to the settlement agreement between the City of Benicia and the State Lands Commission, approved by the State Lands Commission on March 1, 1995, that include property that underlies any portion of the project as authorized.

3. **Co-Permittee Status of State Lands Commission.** When, pursuant to the final settlement agreement between the City of Benicia and the State Lands Commission described in Section II-K-1, above, the State Lands Commission becomes the owner of any portions of the project site, the permittee shall, within 30 days of the conveyance of any portion of the project site to the State Lands Commission, insure that this ownership is properly reflected in the amended permit by one of the following means: (a) the City of Benicia and the State Lands Commission shall request that the State Lands Commission be added to the amended permit as co-permittee; or (b) the City of Benicia shall execute a partial assignment of Permit No. 5-77 in favor of the State Lands Commission, thereby providing that the State Lands Commission becomes a co-permittee; or (c) the City of Benicia shall demonstrate, by long-term lease, easement or other recorded instrument, that it retains control over the entire project site.

4. **Re-Submittal of Public Access Instrument.** If, pursuant to the final settlement agreement between the City of Benicia and the State Lands Commission, the ownership or control of any of the areas of the project that are the subject of the public access instrument executed by the City shall change, the owner of that property shall re-submit a public access instrument, prepared in conformance with the requirements of Special Condition II-G-2, to the Commission for approval, and upon approval the instrument shall be duly executed and recorded with the County of Solano. Such instrument shall fully account for future maintenance of the public access areas.

P. **Mitigation for Excavation of Drainage Ditch (Amendment No. Twenty-Eight).** The permittee shall implement the following mitigation measures to offset the unavoidable adverse impacts of clearing marsh vegetation and sediment from the drainage ditch, authorized under Amendment No. Twenty-Eight: (1) remove three small palm trees from the marsh plain and

dispose of them outside the Commission's jurisdiction (required to be completed by January 31, 2003); (2) remove approximately 100-square-feet of non-native, invasive ice plant (including root structure) near the project site and dispose of it outside the Commission's jurisdiction (required to be completed by January 31, 2003); and (3) install up to six "No Dogs Allowed in Marsh" signs (required to be completed by July 1, 2003). All mitigation required by Amendment No. Twenty-Eight is shown on Exhibit A and referenced in a letter from the permittee to the Commission dated November 7, 2002.

Q. **Marsh Protection**

1. **Best Management Practices.** All construction operations shall be performed to prevent construction materials from falling into the Bay and marshlands. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.

2. **Marsh and Upland Plant Protection During Construction.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition. If any adverse impacts occur to marshlands outside of the 2,700-square-foot construction impact area, and if these areas do not re-vegetate to their former condition within one year, the permittee shall seed all disturbed areas with appropriate vegetation consistent with plans approved by or on behalf of the Commission. The permittee shall employ mitigation measures to minimize impacts to wetland areas, such as: (1) minimizing all traffic in marsh/mudflat areas; and (2) placing geotextile fabric under gravel placed in the upland staging area to aid in the subsequent removal of all of the gravel.

R. **Debris Removal.** All construction debris, such as concrete, asphalt, wood, plastics, etc., shall be removed from the project site for proper disposal at an authorized location outside of the Commission's jurisdiction. Inert construction debris, other than excavated material and vegetation authorized in Amendment No. Twenty-Eight, may be temporarily stored within the Commission's shoreline band jurisdiction, provided measures are employed to assure that material does not wash, blow, or erode into the surrounding marsh or waterways. In the event that any such material is placed in any area within the Commission's jurisdiction for an extended period (i.e. more than 60 days), the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

III. Findings and Declarations

This amended authorization 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 permit were commercial with some residential use allowed on the second floor. The Commission approved the public access proposed in the original permit 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 use; 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 authorizes elimination of the majority of commercial uses immediately around the marina basin and replaced them with 192 units of two- and three-story townhouses. In authorizing the change in use, the Commission finds that the original uses were not the only uses that could be authorized under the Special Area Plan 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.** Under the original project, the permittee proposed public access areas along approximately 8,000 feet of the shoreline, including continuous landscaped pedestrian and bicycle paths around the entire project shoreline and the provision of approximately 45 percent of the area of Point Benicia for a landscaped pedestrian and bicycle path, as shown on the plan entitled "Benicia Waterfront Project Development Plan," dated March 15, 1977. As conditioned, the Commission finds the public access areas and improvements proposed in the original project is the maximum feasible public access consistent with the *Special Area Plan No. 3: Benicia Waterfront*, the *San Francisco Bay Plan*, and the McAteer-Petris Act.

Amendment No. Two authorizes elimination of the majority of commercial uses immediately around the marina basin and replaces them with 192 units of two- and three-story townhouses. To offset the public access impacts associated with the change in use, namely the more private nature of residential use, and to ensure consistency with the intent of the *Special Area Plan No. 3: Benicia Waterfront*, the Commission finds it necessary to require additional public access areas and improvements. Under Amendment No. Two, the permittee proposes to increase the amount of public access around the marina by 92,550 square feet (2.13 acres)--from about 3.54 acres in the original permit to about 5.67 acres, as shown on the plan entitled "Old Capitol Marina Master Plan," revised July 28, 1981, by Ralph Alexander, Landscape Architecture. In addition, the public access was extended from along approximately 8,000

linear feet of the shoreline to 8,500 linear feet. 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. The permittee also proposes to build the historic park at the end of First Street when the Point Benicia restaurant 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 the project authorized in Amendment No. Two provides quality public access equivalent to the original project and is the maximum feasible consistent with *Special Area Plan No. 3: Benicia Waterfront*, the *San Francisco Bay Plan*, and the McAteer-Petris Act.

Amendment No. Three authorizes 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 27,450 square feet (.53 acres)--from about 5.67 acres as authorized in Amendment No. Two to about 6.2 acres, primarily along the western edge of the marina and at the northeast corner, as generally shown on the plan entitled "Increased Setback Open Area Plan," dated May 12, 1982, and prepared by Ralph Alexander Associates. The precise area will be determined during plan review. The Commission finds that public access to the various docks presents a potential safety and security problem that may increase insurance costs for the permittee. 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. The Commission finds the project authorized in Amendment No. Three, as conditioned, assures the increase in public access on the shoreline, provides maximum feasible public access to and along the Bay consistent with the *Special Area Plan No. 3: Benicia Waterfront*, the *San Francisco Bay Plan*, and the McAteer-Petris Act. 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 safe public use of the marina facilities and to allow the public closer access to the water and vessels in the marina.

Amendment No. Five authorizes the installation of sheet piles on the north and west bank of the marina basin to stabilize the marina configuration. The Commission finds the work authorized in Amendment No. Five does not create a public access burden and, therefore, no additional public access is required.

Amendment No. Six authorizes an increase in the number of open berths from 309 to 321 and 38 new end and side tie berths for a total of 359 small boat berths. The Commission finds the existing public access areas and improvements are sufficient to accommodate this small increase in boat berths and, therefore, no additional public access is required.

Amendment No. Eight authorizes a one-year time extension to complete the public access and landscaping at the end of the marina spit. By letter dated April 26, 1989, the permittee stated that all other improvements on the marina spit have been completed. A representative of the permittee has stated that funds have been incorporated into the

permittee's budget expressly for the purpose of completing these improvements within the next year. While the end of the marina spit is not, at present, landscaped, the area remains open and accessible to the public. The Commission finds the time extension authorized in Amendment No. Eight for the installation of public access improvements is consistent with the Commission's policies on public access in that public access improvements have been installed in segment commensurate with installation of the development.

Amendment No. Thirteen authorizes construction of the First Street promenade from "B" Street to the Carquinez Strait. The project is intended to enhance public access to and along the shoreline and would provide approximately 35,164 square feet of new and improved access including a brick banded sidewalk, seating, landscaping, and historic lamp posts. In authorizing Amendment No. Thirteen, the Commission recognizes that the First Street promenade is one element of the Benicia Urban Waterfront Restoration Plan, which envisions the historic park area at the foot of First Street becoming a festival marketplace with a mixture of public and private uses. The Restoration Plan's interpretation of the historic park concept is more urban in nature and provides for a greater intensification of use than originally intended and required under Amendment No. Two. While Amendment No. Thirteen does not constitute approval of the entire Restoration Plan, the Commission finds that the First Street promenade itself is consistent with the intent of *Special Area Plan No. 3: Benicia Waterfront*, and that approval of the First Street promenade does not compromise the historic park requirements of Amendment No. Two. Moreover, the Commission finds that public access proposed under Amendment No. Thirteen is the maximum feasible consistent with *Special Area Plan No. 3: Benicia Waterfront*, the *San Francisco Bay Plan* and the McAteer-Petris Act. It is anticipated that other elements of the Benicia Urban Waterfront Restoration Plan will be presented to the Commission for consideration.

Amendment No. Seventeen authorizes a decrease in the number of open berths from 319 to 290, the addition of seven end and side-ties, and the construction of a 1,300-square-foot addition to the visitor dock along with a 270-square-foot landing ramp to the shore. The Commission finds that work authorized in Amendment No. Seventeen improves public access to the visitor dock (in conjunction with possible ferryboat service from the dock in the future) and results in a net reduction of fill for docks, consistent with the Bay Plan policies on public access and recreational marinas.

Amendment No. Nineteen authorizes changes to the townhome configuration and public access authorized and required under Amendment Nos. Two and Three. Under Amendment No. Two, the Commission authorized the elimination of the majority of commercial uses immediately around the marina basin and allowed them to be replaced with 192 units of two- and three-story townhouses. To offset the public access impacts associated with this change in use and to ensure consistency with the intent of the *Special Area Plan No. 3: Benicia Waterfront*, the Commission required additional public access areas and improvements. In the early 1980's, the permittee and its lessee proceeded to finalize the site plan for the construction of the approved townhomes and the required public access at the Benicia Marina, Phase II Townhome site, and the Commission staff had approved several preliminary plans. However, the lessee became financially insolvent and the City was forced to temporarily abandon the project until another lessee and development partner could be located. Due to market constraints and difficulties in obtaining construction financing, it was not until the mid-1990's that the City was able to bring another developer, Kaufman and Broad, onboard to design and

construct a new townhome project. Because of the changes in market conditions, the permittee and its lessee did not believe that the approved townhome configuration and required public access were appropriate and requested Amendment No. Nineteen.

Amendment No. Nineteen effectively replaces the townhome configuration and public access areas and improvements for the Benicia Marina, Phase II Townhomes site as shown on the "Old Capitol Marina Master Plan" and the "Increased Setback Open Area Plan" with the townhome configuration and public access areas and improvements as shown on the "Benicia Marina-Phase II, Planned Development Plan." While the changes authorized in Amendment No. Nineteen are generally consistent with the "Old Capital Marina Master Plan" in that only 116 units will be constructed at the Phase II site, the units are designed with a different building type, size and height and more private landscaping than the units originally approved by the Commission. While the lessee, Kaufman and Broad, has made these changes to improve the marketability of the townhomes and to meet City planning requirements, the project is more land intensive, thereby resulting in some changes to the required public access.

Under Amendment Nos. Two and Three the City was to provide a landscaped public access corridor along the marina basin connecting the Marina Green to the East Park and the East Park to the marina spit. In the residential areas, the Commission required that the minimum width of the public access corridor be 39 feet from the top of bank to the edge of any private patio and that the 40-foot-tall residential structures be set back an additional ten feet from the private patios for a total setback of 49 feet. The revised public access corridor authorized under Amendment No. Nineteen will be approximately 35,000 square feet with 16,900 square feet of pedestrian and bicycle pathways, 1,120 square feet of wooden overlooks, a 300-square-foot restroom and 16,680 square feet of irrigated landscaping. In areas bordered by residential structures, the total public access corridor will vary in width from approximately 40 to 44 feet. In areas next to parking areas, the public access corridor will vary in width from approximately 25 to 30 feet, and in areas next to the mews or private driveways the public access corridor will be 49 feet wide. A typical cross-section includes a four-foot-wide landscaped edge along the top of the marina bank, a six-foot-wide pedestrian path, a zero to six-foot-wide landscaped area to separate the paths, a six-foot-wide bike path, a 12- to 18-foot-wide landscaped area, and a four-foot-wide path providing access to the residential units. The interior or landward edge of this four-foot-wide path delineates the boundary between the public and private areas. The meandering and separated pedestrian and bicycle paths will be similar to the paths along the Benicia Marina Phase I site. Wooden outlooks will punctuate the marina shoreline at intervals along the public access corridor. The outlooks are designed to overhang the riprapped marina basin and provide a feeling of closeness to the water without Bay fill. The landscaping along the public access corridor will be similar in concept to the landscaping in the Phase I Townhome public access area. Wrought iron fences will be used between buildings that front onto the waterfront area to guide the public away from the private walkways and to encourage the public to use the marina parking areas and public walkways to access the waterfront.

Under Amendment No. Two, the City was to provide a 57,500-square-foot park, including paved plazas, along the northwest portion of the marina. Not less than 36,300 square feet of the park was to be landscaped green areas. The "Old Capitol Marina Master Plan" and the "Increased Setback Open Area Plan" established the configuration of the park as an L-shaped area along the elbow of the marina basin. The revised Marina Green authorized under

Amendment No. Nineteen will be an approximately 57,900-square-foot public park at the northwest section of the marina including approximately 8,200 square feet of walkways, 10,420 square feet of paved plazas, 2,400 square feet of trellis structures, 450 square feet of wooden over-looks, a 1,200-square-foot Marina Facilities Building, and 34,600 square feet of irrigated landscaping. The Marina Green will be square rather than having an L-shaped configuration, with a greater portion of the park outside the 100-foot-shoreline band. The park will consist of two distinct areas. In the far northwest corner, next to the townhomes, there will be a passive recreation area with tiered landscaping creating a slight berm to provide an attractive backdrop to the Marina Green and establish a separation between the active public access areas of the park and the private residential areas. At the southeast portion of the park there will be an active use area consisting of lawn and an expansive triangular shaped plaza at the point overlooking the marina basin. The paved plaza will have tables, trees, and decorative pavement, and is designed to provide a place to hold outdoor events, festivals, public gatherings and picnics. The plaza will be placed in a prominent location next to the marina basin to provide views of the marina and is located near other organized public activities along the waterfront and on First Street.

Under Amendment No. Three, the City was to provide an approximately 18,112-square-foot, landscaped park along the northeastern portion of the marina. The "Increased Setback Open Area Plan" and subsequent Commission staff plan reviews established the configuration of the park as an irregularly-shaped polygon extending from the elbow of the marina basin towards East 5th Street. The revised townhome configuration authorized by Amendment No. Nineteen will result in several residential units placed within the area originally intended for the park. As an alternative to the required park, the permittee will construct a 17,300-square-foot park that extends along the shoreline, from the elbow of the marina basin to the launch ramp, with the foot of the park jutting east towards East 5th Street. The East Park will be an approximately 16,500-square-foot public park located at the northeast section of the marina. The park will include approximately 6,510 square feet of walkways, a 400-square-foot gazebo, 560 square feet of wooden overlooks and 9,830 square feet of irrigated landscaping. The park will serve as an eastern gateway to the public access areas and as a place for pedestrians and bicyclists to stop and enjoy the views. To accommodate the proposed design, several parking and trailer spaces and an approved commercial use will be eliminated. Overall, there appears to be a reduction in the amount of public access area devoted to the east basin. The total amount of public access required along the east basin from the elbow to the launch ramp is approximately 23,100 square feet, while the applicant will provide approximately 17,300 square feet. To offset this loss in area, the permittee will provide more public access along the shoreline corridor and in the Marina Green, and will generally provide more amenities, including a tot lot, within the East Park.

The Commission's Design Review Board reviewed the revised townhome project and public access areas and improvements at its December 2, 1996, meeting and found that the proposed project is functionally better and more attractive than the townhomes and public access authorized and required under Amendment Nos. Two and Three. The Board recommended several minor changes which the permittee has generally incorporated into the revised site plan. Special Conditions II-A-7 and II-G-1 require that the townhomes and public access areas and improvements be constructed as generally shown on the plan entitled, "Benicia Marina-Phase II, Planned Development Plan", prepared by Kaufman and Broad and received by the Commission on January 7, 1997. Therefore, as conditioned, the Commission finds that the public access areas and improvements provided under Amendment No. Nineteen are the

maximum feasible public access consistent with the project as required by the McAteer-Petris Act, the San Francisco Bay Plan and the *Special Area Plan No. 3: Benicia Waterfront.*

Amendment No. Twenty-Two authorizes the exterior rehabilitation and restoration of the historic Southern Pacific Depot. Interior work and use of the structure would occur in a future phase. The project is consistent with the Benicia Urban Waterfront Restoration Plan and would eventually include significant public uses and improved public access. The Commission finds that the rehabilitation and restoration work authorized in Amendment No. Twenty-Two does not create an additional public access burden and, therefore, no additional public access improvements are required at this time.

Amendment No. Twenty-Four authorizes the resurfacing and widening of an existing trail located between the west end of the marina spit and East 5th Street, the replacement of existing benches and trash cans, and the installation of two new, informational slant boards. The work is classified as "routine repair, reconstruction, replacement, removal, and maintenance that do not involve any substantial enlargement or substantial change in use," as defined in Regulation Section 10601(b)(5). Thus, Amendment No. Twenty-~~Three~~ Four is a non-material amendment, for which the Executive Director may issue an amendment to a major permit pursuant to Regulation Section 10822.

Amendment No. Twenty-Nine authorizes the removal of concrete pads, paving and stripping of a vehicle parking area, construction of a public restroom and public pathway and associated features (including lighting, landscaping, a post and chain barrier, interpretive signs), the installation of a stormwater drain system, fire plug, and new electrical conduit and lines, and the extension of water service at the First Street Peninsula, all of which involve the extraction and placement of small amounts of inert inorganic fill or material, within the shoreline band that does not adversely affect public access, a priority use area, or the environment, as defined by Regulation Section 10601(b)(1) and thus is a "minor repair or improvement" under Regulation Section (10601(b)(1) for which the Executive Director can issue an amendment to a major permit pursuant to Regulation Section 10822 (Amendment No. Twenty-Nine).

C. **Fill.** This section of the amended permit, redrafted during the Amendment No. Twenty-Five authorization process, reformats and reorganizes the previous text of the permit but makes no substantive changes in the content or limitations of the original or previously amended permit.

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.

Amendment No. One authorizes the construction of an additional 200 feet of breakwater (for a total of 670 feet), a scour protection mat, and the relocation of a 60-inch storm drain outfall. The Commission finds the work authorized in Amendment No. One does not create a public access burden and, therefore, no additional public access is required.

The project authorized by Amendment No. Twenty-Five involves the placement of fill for an interim storm drain outfall into the Benicia Marina that was approved by the San Francisco Regional Water Quality Control Board, as defined in Regulation Section 10601(4), and thus is a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a). The project is consistent with the McAteer-Petris Act and with the San Francisco Bay Plan in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay. Pursuant to Regulation Section 11501, the project authorized by this permit is categorically exempt from the requirement to prepare an environmental impact report.

Amendment No. Twenty-Five's authorization of the outfall is issued after-the-fact. The authorization of the storm drain diversion into the marina basin is the outcome of an enforcement action, initiated by staff in October 1999, for work completed without a Commission permit between December 1997 and August 1999, which was the result of a collapse of the City's 66-inch-diameter storm drain that extended underwater in the Carquinez Strait, but which now terminates near the marina basin. The amendment application was deemed complete on May 7, 2001, upon the completion of certain requirements imposed by the San Francisco Regional Water Quality Board's Clean-up and Abatement Order, as issued on March 15, 2000. Upon further request of BCDC staff, the Board issued an Amended Order, dated February 1, 2001, requiring the City to develop a work plan and time schedule for a permanent storm drain outfall project, to be submitted to the Board no later than November 1, 2001, and which is the subject of Special Condition II-A-10, herein.

Amendment No. Twenty-Nine authorizes the installation of shoreline rock riprap covering approximately 3,050 square feet at the southwesterly tip of the First Street Peninsula, and thus involves repairs to existing protective works that constitutes the minimum necessary and is less than 10,000 square feet of the horizontal projection of the work below the shoreline, as defined by Regulation Section 10601(a)(2), thereby qualifying as a "minor repair or improvement" under Regulation Section (10601(a)(2) for which the Executive Director can issue an amendment to a major permit pursuant to Regulation Section 10822. (Amendment No. Twenty-Nine).

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.** This section of the amended permit, redrafted during the Amendment No. Twenty-Five authorization process, reformats and reorganizes the previous text of the permit but makes no substantive changes in the content or limitations of the original or previously amended permit.

In the original project, the Commission authorized 60,000 cubic yards of dredging, with disposal at the federally approved Carquinez Strait disposal site, to provided an access channel to the proposed marina. The permittee agreed to dispose of the excess material excavated from the marina at upland locations outside the Commission's jurisdiction. In addition, the permittee designed the marina such that sedimentation within the marina basin and access channel would be minimized, reducing the need for future maintenance dredging.

Amendment No. One authorized an additional 60,000 cubic yards of dredging in Carquinez Strait, the adjacent shoreline band area, and a portion of the marina basin for a total of 120,000 cubic yards of dredging to open up a portion of the marina basin to tidal action. Amendment No. Two also authorized the disposal of spoils from the proposed access channel and marina basin area at the federally-approved Carquinez Strait disposal site.

Amendment No. Four authorized 40,000 cubic yards of initial maintenance dredging within the marina basin, with an addition 10,000 cubic yards of annual maintenance dredging over a six year period, for a total of 100,000 cubic yards of maintenance dredging over a seven year period. Amendment No. Four also authorized disposal of the dredged material at the federally approved Carquinez Strait disposal site. However, at the request of the U. S. Fish and Wildlife Service, the Commission limited dredge disposal at Carquinez Strait to the months of December through March (inclusively) to minimize impacts to anadromous fish.

Amendment No. Seven authorizes a time extension for completion of work until December 31, 1991.

Amendment No. Nine authorized an additional 60,000 cubic yards of maintenance dredging within the marina basin, with disposal at the federally approved Carquinez Strait disposal site. However, the Commission limited the maintenance dredging and disposal to a one-year period, between April 1, 1991 and April 1, 1992, because the Commission was considering new Bay Plan policies on dredging and dredge disposal.

Amendment No. Ten authorized a 30-day time extension to complete the maintenance dredging authorized in Amendment No. Nine. In addition, Amendment No. Ten reduced the authorization from 60,000 cubic yards to 40,000 cubic yards of maintenance dredging to reflect the actual amount of material that would be dredged and disposed. Amendment No. Ten authorizes the permittee until April 30, 1992, to complete the maintenance dredging authorized in Amendment
No. Nine.

Amendment No. Eleven authorizes a time extension for completion of work until April 30, 1995.

Amendment No. Twelve authorizes 20,000 cubic yards of annual maintenance dredging for a 30-month period commencing no later than May 1, 1993, with disposal at the federally-approved Carquinez Strait disposal site. Amendment No. Twelve limits the total amount of material to be dredged at 50,000 cubic yards.

Amendment No. Fifteen authorizes a time extension until November 1, 1993, for the commencement of 20,000 cubic yards of annual maintenance dredging for a 30-month period limiting the total amount of material to be dredged to 50,000 cubic yards, as authorized in Amendment No. Twelve.

Amendment No. Eighteen extends the time limits of the 20,000 cubic yards of annual maintenance dredging until May 1, 1997, consistent with the Corps of Engineers and State Lands Commission authorizations. Amendment No. Eighteen also increases the total amount of material to be dredged to 60,000 cubic yards maximum.

Amendment No. Twenty authorizes dredging up to 40,000 cubic yards of sediment during the first episode and, pending authorization from the San Francisco Bay Regional Water Quality Control Board, an additional 60,000 cubic yards of sediment in subsequent episodes at the Benicia Marina over a thirty-month period, as well as disposal of the dredged material at the federally-designated site in the Carquinez Strait. The revised project authorized by Amendment No. Twenty is defined in Regulation Sections 10602(a) and 10602(c) as maintenance dredging completed within a period of 30 months with disposal at an approved in-bay disposal site consistent with annual target volumes, and thus as a "minor repair or improvement" for which the Executive Director may issue a permit or non-material amendment to a permit, pursuant to Government Code Section 66632(f) and Regulation Sections 10602(a) and 10602(c).

Amendment No. Twenty-One authorizes a time extension for the commencement and completion of dredging authorized under Amendment No. Twenty.

Amendment No. Twenty-Three extends the date for the commencement of maintenance dredging, as described I-A-1-p, until December 31, 2002.

Amendment No. Twenty-Five authorizes an additional 21,000 cubic yards (cy) of sediment to be dredged from the Benicia Marina, in addition to 100,000 cy authorized by I-A-1-p, a project defined in Regulation Sections 10602 as maintenance dredging completed within a period of 30 months with disposal at an approved in-bay disposal site consistent with annual target volumes, and thus as a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Sections 10602(a), 10602(c)(1)(2)(A), and 10602(3)(e). Additional dredging episodes may be authorized by amendment pursuant to the aforementioned dredging plan within the 30 month time frame, or granted time extension, of the original permit. The City has already dredged 42,000 cy of the 100,000 cy authorized by Amendment No. Twenty, during the time extension authorized by Amendment Nos. Twenty-One and Twenty-Three, leaving 58,000 cy for subsequent dredging. By increasing the authorization by 21,000 cy, for a total of 79,000 cy in the second episode, the City will be able to dredge the boat slips and berths of the Benicia Marina that have not been maintained by the marina lessee, in addition to the inner and outer harbor, and turning basin.

The Commission further finds, declares, and certifies that the activity or activities authorized by Amendment No. Twenty-Five 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. Pursuant to Regulation Section 11501, the project authorized by this permit is categorically exempt from the requirement to prepare an environmental impact report.

Amendment No. Twenty-Seven authorizes an additional 14,000 cy to be dredged from the Benicia Marina, as a project defined in Regulation Section 10602 as maintenance dredging with disposal at an approved in-Bay disposal site consistent with annual target volumes, and is thus a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10602(a), 10602(c), and 10602(3)(e).

Amendment No. Twenty-Six authorizes maintenance dredging of 60,000 cubic yards of material per year at the Benicia Marina, for a total of five years, a project defined in Regulation Section 10602 as maintenance dredging with disposal at an approved in-Bay disposal site, and is thus a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10602(a), 10602(c), and 10602(3)(e). Amendment No. Twenty-Six also authorizes knockdown episodes of up to 1,000 cubic yards per year of mounded material within the maintenance dredging footprint and depth, and activity similar to maintenance dredging, as defined in Regulation Section 10602, and is thus a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10602(a), 10602(c), and 10602(3)(e).

Amendment No. Thirty-One authorizes disposal of dredged material at the Alcatraz Disposal site during the restricted dredging period of December 1st to May 31st to accommodate mitigation measures recommend by NOAA Fisheries. Changing the disposal site reduces the potential impacts to endangered salmonids while they migrate to their spawning grounds. In addition, Amendment No. Thirty-One establishes a work window for this project from June 1st to November 30th in any year pursuant to the U.S. Fish and Wildlife Services biological opinion dated August 29, 2003. Lastly, this amendment provides approval to continue dredging and disposal of 1,500 cubic yards from inside the marina basin until December 31, 2005. These activities will not adversely affect public access, a priority use area, or the environment. However, it does constitute fill in the Bay, and may be authorized administratively under Regulation Section 10602(a) and 10602(e)(1) and 10602(e)(2) (Amendment No. Thirty-One).

The Commission finds that the dredging authorized in the original permit and Amendment No. One, and the maintenance dredging authorized in Amendment Nos. Four, Nine, Ten, Twelve, Fifteen and Eighteen, Twenty-Five, Twenty-Seven and Twenty-Six are consistent with the *San Francisco Bay Plan* and McAteer-Petris Act in that the material would be dredged to create and maintain a marina basin, a water-oriented use, the material would be disposed of at a designated in-Bay disposal site, and that the materials would be disposed of in a manner that minimizes impacts fish and wildlife habitat.

F. Live-Aboard Use

Live aboard boats, as authorized under Amendment No. Fourteen are distinguished from other navigable boats in that they are also used as a primary place of residence. Residential use is neither a water-oriented use nor a public trust use. Since the Commission must

approve uses in the Bay consistent with its interpretation of permissible public trust uses, the Commission cannot approve indiscriminate live-aboard use. However live-aboard boats, when properly located in a recreational marina, can provide a degree of security to the marina, a legitimate trust use, and can be considered an ancillary use to a recreational marina because of this security function. The Bay Plan live-aboard policies allow the Commission to approve up to 10% of the berths in a recreational marina for live-aboard use provided the live-aboards would promote recreational boating use of the marina (for example, providing a degree of security), and are located in the marina consistent with such purpose.

The permittee requests that live-aboard use be permitted at 32 of the 323 (10%) authorized boat berths in the marina. The live-aboard vessels will be distributed in the marina in a manner that ensures at least one live-aboard at each dock and prevents concentration of numerous live-aboards at only one or two docks. Therefore, the Commission finds the live-aboards would be located in the marina consistent with their intended purpose of providing a degree of security and would thereby promote and further the recreational boating use of the marina.

Residential use of San Francisco Bay by itself is impermissible under the public trust, and the Commission has approved the live-aboard use authorized herein on the basis that it will provide security and thus promote and further the recreational boating use of the marina, a legitimate public trust use. Therefore, the Commission finds that Special Conditions II-E-1 through II-E-5 are necessary to ensure that the live-aboard program and use authorized herein will be conducted in a manner consistent with the public trust by providing security for the marina to promote and further recreational boating and is not abused for other purposes.

In addition to limiting the number of live-aboard berths authorized in a marina and requiring the live-aboard use to promote and further a security purpose, the Bay Plan live-aboard policies require certain facilities be available for live-aboards at the Marina, including sufficient and conveniently located restrooms, showers, garbage disposal facilities, and parking.

There are four existing public restrooms (two permanent and two temporary) at the Benicia Marina with one permanent restroom located adjacent to the Marina office, a temporary restroom located adjacent to Docks A and B, a temporary restroom located adjacent to Docks C and D, and a permanent restroom located adjacent to Docks E and F. The restroom facilities provide 12 toilets and 20 showers. All berthers have keys to the restroom and shower facilities, allowing 24 hour access. Four existing trash dumpsters/enclosures are provided throughout the marina. The permittee has also provided a total of 275 parking spaces and 24 trailer parking spaces to accommodate marina users, live-aboards, and the general public. These existing facilities appear to be adequate to handle the needs of the proposed live-aboard use without impairing recreational uses or public access. Special Condition II-E-6. requires that the necessary facilities be provided and maintained for live-aboards and their guests. Therefore, the Commission finds that the Benicia Marina currently has sufficient and conveniently located restrooms, showers, garbage disposal facilities, and parking to meet the requirements of the *San Francisco Bay Plan*.

The McAteer-Petris Act requires that the nature, location and extent of any fill should be such that it will minimize harmful effects to Bay resources such as water quality. Although no new fill is proposed, Amendment No. Fourteen involves adding a live-aboard use to an existing marina fill project. As such, the fill could have greater potential to impair water quality than it previously did. Water pollution is a major adverse impact associated with concentrations of live-aboard boats if wastewater is discharged into areas of the Bay with minimal tidal circulation, such as marine basins.

Amendment No. Nineteen authorizes changes to the vehicle parking, boat trailer parking, and restroom and shower facilities for the marina and live-aboard tenants. Under Amendment No. Two, the City was required to provide a total of 275 parking spaces and 24 boat trailer parking spaces for use by live-aboard tenants, recreational boaters, guests and the public. Amendment No. Nineteen authorizes the permittee to reduce the total number of parking spaces at the marina for live-aboard tenants, recreational boaters, guests and the public to 234 and to reduce the boat trailer parking spaces to 10 (the City initially constructed only 12 of the required 24 boat trailer parking spaces).The Department of Boating and Waterways has established a parking standard of 0.6 parking spaces per marina berth. To meet the Boating and Waterways standard only a total of 194 parking spaces are required for the marina. The permittee has indicated that the existing parking is more than adequate to meet the needs of the marina and that an informal user survey did not show a need for 275 parking spaces. As authorized under Amendment No. Nineteen, the parking areas for the marina and the public access areas will be distributed at five sites in proximity to the boat docks and each of the two parks. Two parking areas will be sited next to the Marina Green on East 2nd Street and E Street, respectively, to provide access for the public to the Marina Green and access for recreational boaters and live-aboard tenants to Docks A and B. Two additional parking areas will be sited along E Street to provide access to the public access areas and access for recreational boaters and live-aboard tenants to Docks B and C. The fifth parking lot will be located at the foot of East 5th Street to support the boat launch ramp and provide access to East Park. Eight-foot-wide sidewalks will provide pedestrian access from E Street through each of the three parking lots to the public access areas, while six-foot-wide sidewalks will be used to provide pedestrian access from East 2nd Street and East 5th Street through the parking areas and to the public access. The parking areas will also serve as view corridors from the public streets to the marina basin and break up the "wall" created by the townhomes. In addition to the marina and public parking spaces, there are 48 on-site guest parking spaces and 80 on-street parking spaces provided for the homeowners, along with 232 garage parking spaces (2 garage spaces per unit), for an overall parking ratio of 3.1 spaces per unit. Despite the reduction in marina parking, the Commission finds that, as conditioned, the distribution, design and number of parking spaces will adequately serve the needs of live-aboard tenants, recreational boaters, their guests and the public.

With regard to the Marina showers and restroom facilities, Amendments No. Two, Fourteen and Seventeen required that the permittee provide four restrooms with 12 toilets for the use of live-aboard tenants, boaters, their guests, and the public. Special Condition II-G-3 requires a total of six restrooms for the public. Of the four restroom facilities, the permittee was allowed to provide two temporary restrooms for Docks A and B and Docks C and D until the adjacent shoreline areas are developed and permanent restrooms furnished. The permittee was

also required to provide four sets of showers with 20 showers, of which two sets could be temporary facilities for Docks A and B and Docks C and D until the adjacent shoreline areas are developed and permanent showers provided.

Amendment No. Nineteen authorizes the construction of three new restrooms, two of which contain shower facilities, to replace the two temporary facilities. The Marina Facilities Building will be located within the Marina Green and will provide a total of ten showers and eight toilets. All ten showers and six of the eight toilets are exclusively for the use of live-aboard tenants and recreational boaters. The remaining two toilets are for public use. The Marina Facilities Building is sited next to the East 2nd Street parking lot and between the entrances to Docks A and B to provide access for recreational boaters and the public using the Marina Green. The east restroom facility will be located at the entrance to Dock C along the waterfront halfway between East 2nd Street and East 5th Street and will contain two toilets and two showers to serve live-aboards, recreational boaters and the public. A third restroom will be located at the boat launch ramp parking lot, within a landscaped median. This restroom will have a single toilet to serve the public using the launch ramp and the East Park. The two permanent restrooms and shower facilities provided at the Harbor Masters Office and on the Marina Spit will continue to provide two toilets and two showers, and four toilets and four showers respectively. As authorized under Amendment No. Nineteen, the total number of restrooms facilities will be five, containing a total of 17 toilets and 18 showers. The one remaining restroom will be constructed in the commercial section of the overall project in the future. The Commission finds that, despite the slight reduction of the number of showers, the restroom facilities are adequately distributed and sufficient to meet the needs of live-aboard tenants, recreational boaters, their guests and the public.

The Commission also finds that Special Condition II-E-7 is necessary to ensure that the proposed live-aboard program, and the recreational marina uses do not adversely impact water quality in the Benicia Marina.

Amendment No. Twenty-Nine modifies language contained in Special Condition II-E-7 of this amended permit, which is intended to ensure that marinas comply with federal and state water quality laws prohibiting the discharge of oily waste, including wastewater, into the Bay. This special condition as originally written, however, resulted in some marina operators prohibiting boat owners from using automatic bilge pumps, which, in turn put owners at risk of losing their boats and insurance. Therefore, Special Condition II-E-7 was revised so as not to apply to the discharge of liquid wastes associated with use of automatic bilge pumps. The modification to this special condition will not result in adverse effects on the Bay, and thus is a similar activity with no greater adverse impact on the Bay, as defined by Regulation Section 10601(e)(3), to those listed as minor repairs or improvements in Regulation Section 10601. Further, this modification will not result in a material alteration of the original authorization, and thus can be authorized by the Executive Director, pursuant to Regulation Section 10822.

G. **Ten-Year Time Extension (Amendment No. Eighteen).** Amendment No. Eighteen grants a ten-year time extension, until April 30, 2006, of permission previously granted in BCDC Permit No. 5-77, as amended through Amendment No. Seventeen, to the City of Benicia for development of the harbor at Benicia Point. This extension of time has been issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10822, and upon the finding that this time extension is not a material alteration of the project authorized by

Permit No. 5-77, as amended through Amendment No. Seventeen. In a letter dated August 22, 1995, the City of Benicia requested this ten-year extension of the amended permit. The reason for the long time period was that, since the permit was originally issued in 1977 and some portions of the authorized work were completed, marina waterfront development had been significantly slowed by (1) the generally slowed economy in California, (2) a significant change in commercial and retail development from small downtown centers to "big box" retailers, and (3) a public trust claim against the City by the State Lands Commission, which was resolved by a settlement approved by the State Lands Commission on March 3, 1995. The harbor is currently the subject of economic, fiscal and planning studies that are reviewing the feasibility of locating water-related operations at the waterfront. These studies may result in significant changes to the proposed project, resulting in one or more requests to BCDC for material or non-material amendments to the amended permit. While a ten-year extension of completion time for a project is not commonly granted, in this case it is justifiable, since the proposed studies, the environmental review and approval process for such plans, and processing of resulting requests to BCDC for permit amendments, could take a number of years. The ten-year time extension granted pursuant to Amendment No. Eighteen will provide adequate time for an orderly planning and permitting process. BCDC has requested, and the City has agreed, that throughout the study and planning process the City will maintain frequent and regular consultation with BCDC on planning initiatives with BCDC, meeting with BCDC staff periodically, and maintaining regular informal telephone contact to ensure that all proposed development of the Benicia Point waterfront will be consistent with the McAteer-Petris Act and the *San Francisco Bay Plan*.

H. **Non-Material Amendments.** Amendment No. Twenty-Eight authorizes: (1) removing 55 cubic yards of sediment and vegetation from a ditch to facilitate drainage from a storm drain, a similar activity as defined by Regulation Section 10601(e)(3), to the routine repair, reconstruction, replacement, removal, and maintenance that does not involve any substantial enlargement or change in use in the Bay, as defined by Regulation Section 10601(a)(6); and (2) the placement and grading of approximately 44 cubic yards of gravel within an existing parking lot, an activity which involves placing small amounts of inert inorganic fill within the shoreline band which will not have a significant adverse impact on present or possible future maximum feasible public access to the Bay, as defined in Regulation Section 10601(b)(1), and is thus a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).

I. **Environmental Impact.** The City of Benicia, the permittee and lead agency for the original 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 original project substantially outweighed the public detriment due to unavoidable adverse impacts on the environment. The lead agency also found the changes proposed in Amendment Nos. Two and Three were covered by the original Environmental Impact Report, and certified that Amendment Nos. Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Twenty-Two were categorically exempt. On June 4, 1991, the City of Benicia certified the final Negative Declaration for work authorized in Amendment No. Thirteen. Moreover, pursuant to Commission Regulation Section 11501 work and uses authorized in Amendment Nos. Fourteen, Fifteen, Seventeen, Eighteen, Twenty, Twenty-One, Twenty–Three, Twenty-Four, and Twenty-Nine are categorically exempt.

J. **Public Trust.** The Commission finds the original project, as amended and conditioned, is consistent with the public trust.

As a result of the historical conveyance of tide and submerged lands, and of lands subject to overflow underlying the project site by the State to the City of Benicia, and by the City to private owners who subsequently reconveyed the property to the City, the legal character of title to the lands, most particularly with the extent to which these lands remained subject to the public trust for commerce, navigation, fisheries, water-oriented recreation and other recognized public trust purposes, has been questioned. On March 1, 1995, the State Lands Commission approved a settlement agreement with the City of Benicia in which (1) certain parcels adjoining the shoreline, which are presently subject to a public access easement pursuant to BCDC Permit No. 5-77, would become the property of the City, free of the public trust easement; (2) the public access easement would be conveyed to the State; (3) underwater portions of the disputed parcels would become the property of the State, but would remain subject to an existing lease for marina and related commercial purpose, and (4) the State would then quitclaim these same parcel to Benicia, subject to a public trust easement. Special Condition II-K-1 through -4 require the permittee to submit documentation to BCDC that will accurately reflect the state of title of all property underlying the project site, and to ensure that no change in title to any property subject to this amended permit will affect the public access requirements of the amended permit (Amendment No. Eighteen).

K. **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 and Declaration of Compliance form 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 this amended permit, 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, duties, and obligations contained in this amended permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittee/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receive an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions 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 in the amended permit, within three years. If the work is not completed by the date specified in this amended permit, or, if no date is specified, within three years from the date of this amended permit, this 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 any 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 notwithstanding the placement of any fill or the implementation 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.

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.

WILL TRAVIS
Executive Director
San Francisco Bay Conservation
and Development Commission

By: _____
STEVEN A. McADAM
Deputy Director
for Permits and Technical Services

SAM/BG/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: Mike Monroe, WTR-8
Department of Fish and Game, Attn: Regional Manager, Region III
City of Benicia, Attn: Michael W. Throne, PE

* *

Receipt acknowledged, contents understood and agreed to:

Executed at _____ _____
Applicant

On _____ By _____

_____
Title

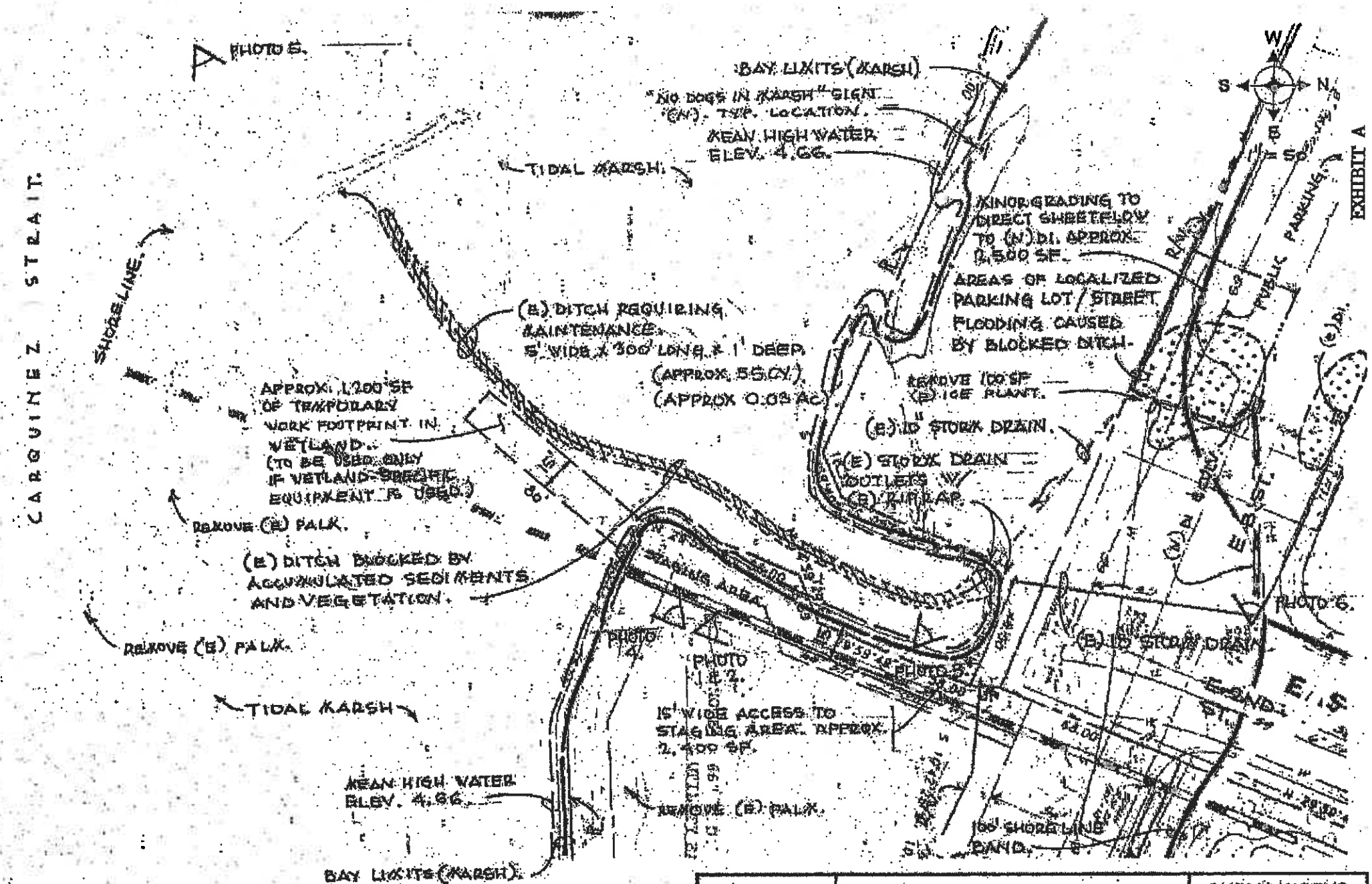

EXHIBIT A

THE CITY OF BENICIA	CITY OF BENICIA	PUBLIC WORKS DEPARTMENT
	TITLE DITCH MAINTENANCE - EAST 2 AND B STS.	
	PROJECT	DATE	SHEET

PERMIT NO. 5-77
(Issued on June 16, 1977, As
Amended Through December 23, 2005)
AMENDMENT NO. THIRTY-ONE
(Exclusive of Amendment Nos. Sixteen and Thirty)

CITY OF BENICIA

NOTICE OF COMPLETION AND DECLARATION OF COMPLIANCE

San Francisco Bay Conservation
and Development Commission
Fifty California Street, Suite 2600
San Francisco, California 94111

Ladies and Gentlemen:

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

I have personally reviewed the terms and conditions of the amended permit, the final plans approved by or on behalf of the Commission, and the completed project and hereby certify that the project is in compliance with all terms and conditions of the amended permit and conforms to the plans previously reviewed and approved by or on behalf of the Commission. I further certify that all conditions of the amended permit, particularly with regard to plan review, public access areas and improvements, recordation, open space restrictions and other special conditions have been met.

I, _____, hereby declare under penalty of perjury that the foregoing is true and correct and that if called upon to testify to the contents of this notice, I would so testify.

Executed on this_____ day of_____, 20____,

at _____, California.

_____
(Permittee)

_____
(Title)