

**Minute Item
73**

12/03/99

G10-8.12

C. FOSSUM, L. KILEY,
H. ANDERSON, J. MARTIN

**SAN DIEGO UNIFIED PORT DISTRICT, B.F. GOODRICH COMPANY,
CALIFORNIA STATE LANDS COMMISSION
(PARTIES)**

Regular Calendar Item 73 was moved to the Consent Calendar and approved as presented.

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MINUTE ITEM

This Calendar Item No. 73 was approved as
Minute Item No. 73 by the California State Lands
Commission by a vote of 3 to 0 at its
12-3-99 meeting.

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73**

A 78, 79

12/03/99

S 39, 40

G 10-8.12

AD 369

PRC 8121

C. Fossum
L. Kiley
H. Anderson
J. Martin

**CONSIDER APPROVAL OF A PROPOSED TRANSACTION INVOLVING AN
EXCHANGE OF PORT PROPERTY, PUBLIC TRUST TERMINATION BY THE
CALIFORNIA STATE LANDS COMMISSION, AND EXPENDITURE OF PUBLIC
TRUST FUNDS BY THE SAN DIEGO UNIFIED PORT DISTRICT FOR THE
ACQUISITION OF LANDS ADJACENT TO EXISTING PORT PROPERTY FROM
ROHR, INC., OPERATING AS BF GOODRICH AEROSPACE AEROSTRUCTURES
GROUP, AND APPROVE A 49-YEAR LEASE OF THE STATE ACQUIRED
PROPERTY TO THE SAN DIEGO UNIFIED PORT DISTRICT, IN THE CITY OF
CHULA VISTA, SAN DIEGO COUNTY**

PARTIES:

San Diego Unified Port District
PO Box 488
San Diego, CA 92122-0488
Attention: David R. Chapman, Port Attorney

Rohr, Inc. operating as BF Goodrich Aerospace Aerostructures Group
850 Lagoon Drive
Chula Vista, CA 91920-2098
Attention: Arthur O. Sellgren, Manager

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attention: Curtis L. Fossum, Senior Counsel

BACKGROUND

The San Diego Unified Port District (Port) is trustee of tide and submerged lands
granted to it by the Legislature pursuant to Chapter 67, Statutes of 1962, 1st

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Extraordinary Session, as amended. The Port desires to expand, reconfigure, exchange, and consolidate land holdings lying between its waterfront facilities at the Chula Vista Marina and Interstate Highway 5 (I-5). The result would be to realign ownership interests in a north/south configuration along H Street, as opposed to the current east/west alignment along the 1905 Ordinary High Water Mark (Exhibit C). The Port has indicated its intention to acquire certain property of Rohr, Inc., operating as BFGoodrich Aerospace Aerostructures Group, a Delaware corporation and wholly owned subsidiary of The BFGoodrich Company (hereafter BFG), by eminent domain, but seeks to avoid the necessity, uncertainties and potential negative results of that process by entering into a mutually beneficial Relocation Agreement (RA) with BFG. The Port and BFG have been negotiating the RA since March 1998. The Redevelopment Agency of the City of Chula Vista (hereafter Chula Vista) is an additional party to the RA.

PUBLIC BENEFITS:

The Port's expressed intent for this transaction is based on its desire to accomplish several important public benefits. These benefits include:

- Improved public access to tidelands property:
 - Visual access from Interstate Highway 5 (I-5) to the reconfigured and consolidated Port property
 - Removal of heavy industrial facilities between the waterfront and I-5, thereby enhancing the viability of trust property previously developed for trust purposes, but which has been isolated, underutilized and undervalued
 - Two off-ramps from I-5 connecting directly to the Chula Vista Marina and adjacent trust property
 - Traffic circulation enhancement by opening H Street from I-5 to a relocated Marina Parkway
- Consolidated parcels that would provide an attractive 83.12-acre contiguous highly marketable Port property with major freeway visibility and access:
 - Inclusion in the consolidated parcel of 14.7 acres of contiguous, filled Port trust lands that have remained unleased since before the Port acquired the property in 1962
 - New opportunity to master plan and develop 9.3 acres of nearby filled Port trust land that has remained unleased since filled in the 1960s
 - An opportunity for additional existing facilities to be relocated and underutilized land redeveloped
- Redevelopment of blighted, out-of-date, sub-standard industrial facilities:

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- Rehabilitation of WW II era industrial development to allow highest and best use in tomorrow's environment and economy
- Nearby Port lands will receive a supplementary substantial leap in value by this redevelopment
- An opportunity to remediate contaminated facilities, soils and groundwater:
 - On an accelerated time table
 - To a higher standard
 - With corporate guarantees on costs backed by a \$6 billion corporation
- Retainment of BFG/Rohr in Chula Vista and California:
 - Cooperation with San Diego County's major private sector employer
 - Expectation of nearly 200 new jobs on consolidated north campus added to existing 2,500 employees
 - Increased efficiency and productivity with an estimated \$50 million private investment in relocating, upgrading and re-tooling BFG facilities
 - Support by organized labor and local government

The Port believes the proposed agreement is an essential part of the redevelopment of the Southeast waterfront of San Diego Bay. The redevelopment will allow the enhancement of and increase the value to a number of presently underutilized port properties and provide numerous public benefits.

LEGAL REQUIREMENTS:

Because the proposed transaction involves the expenditure by the Port of Public Trust revenues in excess of \$1,000,000, the expenditure must first be reviewed and approved by the California State Lands Commission pursuant to Section 30.5 (c) of Chapter 67, Statutes of 1962, 1st Ex. Sess., as added by Chapter 399, Statutes of 1996. Section 30.5 (c) provides that the Commission review the proposed contract on behalf of the State pursuant to Public Resources Code Sections 6701, *et seq.* and that if it is approved by the Commission "no amendment, modification or revocation" of the statutory trust grant "made by the Legislature shall impair or affect the rights of third parties...." In order to comply with all legal requirements the Commission must make the following findings pursuant to Section 6702 (b):

- (1) That such lease, contract, or other instrument is in accordance with the terms of the grant or grants under which title to the tide or submerged lands in question is held.
- (2) That the proceeds of such lease, contract, or other instrument shall be deposited in an appropriate fund expendable only for statewide purposes authorized by a legislative grant.

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- (3) That such lease, contract, or other instrument is in the best interests of the state.

Because the Port does not have the legal authority to terminate the state's Public Trust interest from trust property, the Commission must take title to the Port lands to be exchanged with BFG and as part of that exchange terminate the Public Trust interest from those filled tide and submerged lands and trust acquired lands. The Commission will have to make the following requisite findings of Public Resources Code Section 6307 regarding the exchange:

- (1) It appears to the Commission to be in the best interest of the state for:
 - (a) improvement of navigation,
 - (b) aid in reclamation,
 - (c) for flood control protection, or
 - (d) to enhance the configuration of the shoreline for the improvement of the water and upland, and
- (2) It will not substantially interfere with the right of navigation and fishing in the waters involved
- (3) The lands to be acquired are of equal or greater value than the lands to be conveyed
- (4) The lands acquired by the state in the exchange will take on the same status (Public Trust lands) as those exchanged away
- (5) The lands have been improved, filled, and reclaimed and have thereby been excluded from the public channels and are no longer available or useful or susceptible of being used for navigation and fishing, and are no longer in fact tide and submerged lands and such lands are to be freed from the Public Trust.

In addition to the above statutory required findings, the California courts have identified several other legal requirements necessary for a conveyance of trust lands and a termination of the Public Trust interest in order to comply with California Constitution Article X, Section 3. The lands must be:

- (1) reclaimed as the result of a highly beneficial program of harbor development
- (2) relatively small in area
- (3) useless for purposes of navigation, commerce and fisheries or the acquired lands are of such configuration that they can be used more effectively by the trustee in furtherance of public trust purposes than the filled tidelands to be conveyed

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PROPOSED TRANSACTION ELEMENTS:

The Relocation Agreement is a complex document dealing not only with the exchange and purchase and improvement of various parcels of land, but also time-frames for the relocation and remediation of the property, remediation costs and control, financial assistance, and additional obligations, including but not limited to infrastructure redevelopment.

LANDS: The Port proposes to include in the transaction the exchange of approximately 21 acres of filled Port property. The property consists of three areas:

- 1) Port Parcel 1 – consisting of 9.9± acres of filled tide and submerged lands currently leased to and occupied by BFG
- 2) Port Parcel 2 – consisting of 3.47± acres of filled tide and submerged lands located between the future and present easterly alignments of Marina Parkway north of H Street and south of G Street
- 3) Port Parcel 3 (SDG&E) – consisting of 7.63± acres located within former SDG&E utility corridor, acquired as trust property by Port earlier this year

The Port also proposes to fund the acquisition of three other parcels for BFG totaling 9.09 acres:

- 1) MTDB Parcel – consisting of 2.44± acres
- 2) Rados Parcel – consisting of 3.03± acres
- 3) Chula Vista (CV) Parcel – consisting of 3.62± acres

In exchange for the above parcels and additional consideration described below, the Port is to receive 37.47± acres from BFG:

- 1) BFG Parcel 1 – consisting of 26.66± acres
- 2) BFG Parcel 2 – consisting of 10.81± acres

MONEYS: The prices attributed to these lands in the RA are \$7,813,792 for the lands to be acquired by BFG and \$13,095,875 for the lands to be transferred to the Port. In addition to the actual land values, the Port is providing a paving allowance of \$871,636 for the Rados

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and CV Parcels, closure costs for acquisition of the Rados Parcel of \$675,639, interest buy-down of \$2,500,000, a property tax loan to Chula Vista of \$1,658,277 and cash to BFG of \$4,190,014. The Chula Vista Redevelopment Agency is supporting this transaction with tax credits and fee waivers totaling nearly \$8 million. Additional costs will be described below.

REMEDIATION: The Port and BFG have agreed to a cost sharing remediation plan in the RA that caps the Port's contribution for remediation at 50% of the first \$5.6 million, with the Port in control of the remediation management. If and when the \$5.6 million level is reached, BFG pays all remaining costs and the Port and BFG meet and confer and if necessary arbitrate the management of remediation to the \$12 Million level. Once that level is reached, BFG controls the remediation efforts, consistent with its obligations set forth in the RA. The remediation standard set in the RA is to be the most cost effective, risk based, industrial standard. Industrial is defined broadly to include commercial and various facilities for public use and accommodation (except residential). The vast majority of remediation required is on current Port property. The RA accelerates and facilitates the clean up of that property. The Port has additionally obtained the Guarantee of Rohr's parent company, (The BF Goodrich Company with assets of \$6 billion) to insure the financial ability to complete the remediation.

TIMING: The RA calls for a three-year period for BFG to relocate its facilities from the south campus property to the north campus. Additionally, the remediation of the former BFG Parcels need only begin when a development plan has been adopted by the Port. The Port has indicated it has already begun drafting requests for proposals. Finally, all responsibility for BFG's role in remediation is tied to substances discovered within a 15-year period. The Port has obligated itself to pay for the relocation of Marina Parkway and opening of H Street, which costs are estimated to exceed \$7 million. The RA, when effective, relates back to January 1, 1999.

The Commission staff has reviewed the submittal of information for the proposed expenditure of public trust funds pursuant to Section 30.5 of Chapter 67, Statutes of

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1962, 1st Ex. Sess., as amended and Public Resources Code Section 6701, et seq. The Commission staff has reviewed appraisals, surveys, title reports, toxics reports and other studies conducted for the acquisition.

After reviewing the materials received from the Port, staff sought additional information and clarification for several aspects of the proposed transaction. The primary areas of questions involved issues of valuation and environmental assessment, remediation and control. These issues go both to the fundamental findings of equal value as well as to the transaction being in the best interests of the State.

As noted, above the dollar costs to the Port associated with this transaction greatly exceed the value of the lands to be acquired by the Port. However, when taken in the context of the relocation costs to BFG, the ancillary benefits expected to result to existing Port property and the unique opportunity this transaction offers for improving and integrating a significant land area adjacent to the waterfront of South San Diego Bay into a publicly owned and master planned development, the anticipated public benefits become substantial.

The staff believes the proposed acquisition is consistent with the public trust needs in the area. The lands, to be acquired as trust lands, will be managed by the Port consistent with the statutory trust under which the lands entrusted to them are held and any revenues generated therefrom will be deposited in appropriate trust accounts. Finally, the transaction appears to be in the best interests of the State and staff therefore, recommends that the Commission consent to the proposed expenditure of Public Trust funds.

EXCHANGE AGREEMENT:

In order to consummate the exchange of present Port trust property for the desired BFG property, the Commission must exercise the authority delegated to it by the Legislature as found in Public Resources Code Section 6307. This section authorizes the Commission to exchange interests in lands no longer needed for public trust purposes for lands of equal value and to extinguish the public trust interest in those lands. Therefore, the Commission must take title to the property presently owned by the Port and conduct the exchange of title documents with BFG. Thereafter the Commission will enter into a 49-year lease with the Port for the newly acquired trust lands. The lease will allow the Port to operate these lands for all purposes consistent with its granting statutes. It is the intent of Port and Commission staff to include these lands in the grant by subsequent legislation.

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The proposed Exchange Agreement provides that:

- (1) The San Diego Unified Port District will convey to the State of California, acting by and through the California State Lands Commission, its interests in approximately 21 acres of land (as shown on EXHIBIT C as the PORT PARCEL 1, PORT PARCEL 2 and PORT PARCEL 3 (SDG&E)).
- (2) BFG will exchange its interests in approximately 37.47 acres of land (as shown on Exhibit C as the BFG PARCEL 1 and BFG PARCEL 2) with the Commission for the 21 acres described in the preceding paragraph.
- (3) The Commission will make the requisite findings to terminate the public trust interest from the 21 acres, as described above.
- (4) The transaction is an implementation of the RA between the Port, BFG and Chula Vista and does not supercede the RA's provisions other than as to the substitution of parties involved in exchange of title documents.
- (5) The Port agrees to defend, indemnify and hold the State harmless from any and all claims and liability that might arise from the transaction or the lands involved in the transaction.
- (6) The Commission will enter into a 49-year lease with the Port for the newly acquired trust lands to be used for public trust purposes consistent with the provisions of Chapter 67, Statutes of 1962, 1st Ex. Sess., as amended.

Commission staff has reviewed the proposed exchange and believes all necessary legal elements have been met for the exchange of the Port Parcels 1, 2 and 3 for the BFG Parcels 1 and 2. Staff believes the indemnity provisions incorporated in the exchange agreement sufficiently protect the Commission from any potential liability associated with the transaction or the lands involved. Staff therefore recommends that the Commission approve the Exchange Agreement and authorize its execution and the execution and recordation of all documents necessary to implement it.

EXHIBITS:

- A. Location map
- B. Aerial photo of vicinity

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C. Site map showing parcels involved

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING PROGRAM WERE PREPARED AND ADOPTED FOR THIS PROJECT BY THE CITY OF CHULA VISTA AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

2. FIND THAT PURSUANT TO SECTION 30.5 (C) OF CHAPTER 67, STATUTES OF 1962, 1ST EX. SESS., AS ADDED BY CHAPTER 399, STATUTES OF 1996, THE PROPOSED EXPENDITURE BY THE SAN DIEGO UNIFIED PORT DISTRICT OF \$11,190,656 OF PUBLIC TRUST FUNDS AS AN ELEMENT OF THE ACQUISITION OF CERTAIN PROPERTY FROM BFG PURSUANT TO THE TERMS OF THE RELOCATION AGREEMENT ENTERED INTO ON AUGUST 5, 1999 AS AMENDED NOVEMBER 19, 1999, AND THE TERMS OF THE HEREIN AUTHORIZED EXCHANGE AGREEMENT:
 - A: IS IN ACCORDANCE WITH THE TERMS OF CHAPTER 67, STATUTES OF 1962, 1ST EXTRAORDINARY SESSION, AS AMENDED.

 - B. FUNDS GENERATED ON LANDS ACQUIRED SHALL BE PLACED IN A FUND OR FUNDS EXPENDABLE ONLY FOR STATEWIDE PURPOSES, CONSISTENT WITH THE LEGISLATIVE PROVISIONS UNDER WHICH THE LANDS ARE HELD.

 - C. THAT THE ACQUISITION AND RELOCATION AS PROVIDED FOR IN THE RELOCATION AGREEMENT IS IN THE BEST INTERESTS OF THE STATE.

 - D. THE RELOCATION AGREEMENT IS IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF CONDEMNATION LITIGATION, AND IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.

3. FIND THAT, WITH RESPECT TO THE PROPOSED EXCHANGE AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST WITHIN THE AREA DESIGNATED AS PORT PARCELS 1 AND 2 AND PORT PARCEL 3 (SDG&E) (AS SHOWN ON EXHIBIT C) TO BFG FOR THE LAND

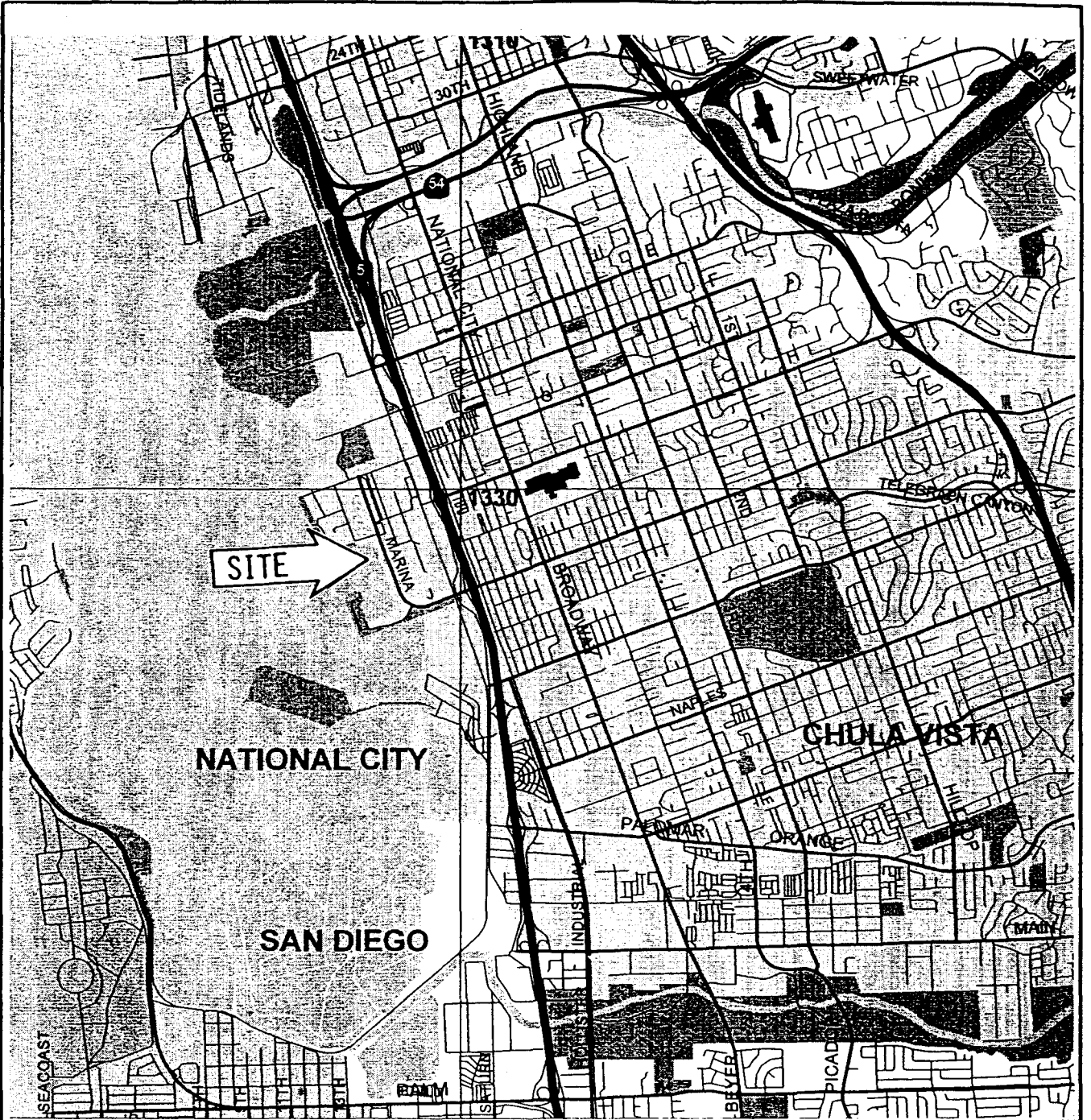
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AND FACILITIES INVOLVING BFG PARCELS 1 AND 2 (AS SHOWN ON EXHIBIT C), TO BE CONVEYED TO THE STATE:

- A. THE EXCHANGE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS.
- (1) TO ENHANCE THE CONFIGURATION OF THE PROPERTY ADJACENT TO THE SHORELINE FOR IMPROVEMENT OF PUBLIC ACCESS TO THE WATER AND DEVELOPMENT OF THE UPLAND
 - (2) THE CONVEYANCES PROPOSED BY THE AGREEMENT WILL NOT INTERFERE WITH BUT RATHER ENHANCE THE PUBLIC'S ACCESS RIGHTS TO THE BAY OF SAN DIEGO.
- B. THAT THE LANDS AND INTERESTS TO BE CONVEYED TO THE STATE AND LEASED TO THE PORT OF SAN DIEGO, AS TRUSTEE OF THE STATE, AS DESCRIBED ABOVE, ARE EQUAL TO, OR GREATER THAN, THE VALUE OF ANY STATE INTEREST IN THE LANDS TO BE CONVEYED BY THE STATE TO BFG.
- C. THE AREA OF LANDS BEING RELINQUISHED BY THE STATE, WHICH COLLECTIVELY ARE A RELATIVELY SMALL AREA (APPROXIMATELY 21 ACRES), HAVE BEEN EVALUATED AS TO THEIR CURRENT PHYSICAL CHARACTER AND TRUST UTILITY; THE TRUST TERMINATION PARCELS 1 AND 2 HAVE BEEN FILLED AND RECLAIMED, AS THE RESULT OF A HIGHLY BENEFICIAL PROGRAM OF HARBOR DEVELOPMENT, FOR NEARLY 30 YEARS, AND HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND ALL LANDS TO BE CONVEYED TO BFG ARE NO LONGER IN FACT TIDE OR SUBMERGED LANDS AND ARE NOT AVAILABLE OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION OR FISHING.
- D. THE LANDS TO BE ACQUIRED FROM BFG ARE OF SUCH A CONFIGURATION THAT THEY CAN BE USED MORE EFFICIENTLY BY THE PORT IN FURTHERANCE OF PUBLIC TRUST PURPOSES THAN THE FILLED TIDE AND SUBMERGED LANDS TO BE CONVEYED.

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- E. ON THE DATE PROVIDED FOR IN THE EXCHANGE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE TRUST TERMINATION PARCELS WILL BE FOUND TO NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND ANY AND ALL PUBLIC TRUST INTEREST OR STATE SOVEREIGN TITLE THEREIN WILL BE TERMINATED.
4. FIND THAT THE LANDS TO BE CONVEYED TO THE STATE ARE TO BE ACCEPTED AS PUBLIC TRUST LANDS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF CALIFORNIA, TO BE HELD BY THE STATE OF CALIFORNIA IN PERPETUITY FOR PUBLIC TRUST PURPOSES.
5. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION OF THE SDUPD / CSLC / BFG EXCHANGE AGREEMENT, ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
6. APPROVE AND AUTHORIZE THE ISSUANCE OF A 49-YEAR LEASE OF THE LANDS ACQUIRED BY THE STATE, PURSUANT TO THE SDUPD / CSLC / BFG EXCHANGE AGREEMENT, TO THE SAN DIEGO UNIFIED PORT DISTRICT, IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH LEASE ON FILE WITH THE COMMISSION.
7. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE EXCHANGE AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.



SITE

NATIONAL CITY

SAN DIEGO

CHULA VISTA

EXHIBIT A

AD 369



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EXHIBIT "B"

AD 369

5-13-93

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CA. COAST. AER. BBK. 30

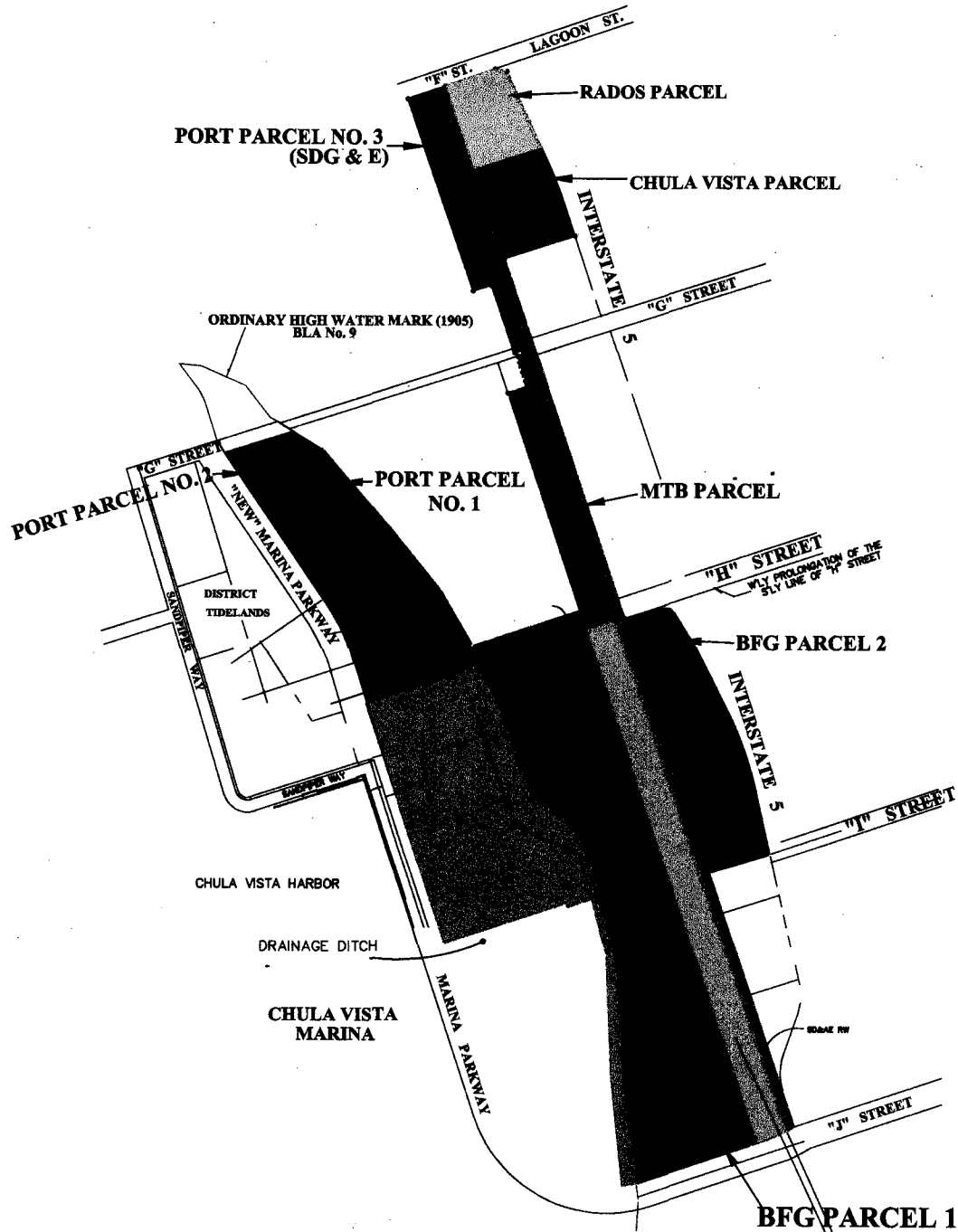












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EXHIBIT 'C'

AD369



-  DISTRICT PROPERTY CONVEYED TO STATE, THEN TO B.F.G. / ROHR
-  B.F.G. / ROHR PROPERTY TO BE CONVEYED TO STATE THEN LEASED TO DISTRICT
-  FORMER S.D.G.&E. PROPERTY TO BE RETAINED BY DISTRICT
-  FORMER S.D.G.&E. PROPERTY TO BE CONVEYED BY THE DISTRICT TO STATE THEN TO BFG / ROHR
-  PRIVATE PROPERTY TO BE CONVEYED TO B.F.G. / ROHR
-  CHULA VISTA REDEVELOPMENT PROPERTY TO BE CONVEYED TO THE BFG/ROHR
-  MTDB PROPERTY
-  S.D.U.P.D. VACANT LOT
-  TO BE DEDICATED FOR "H" STREET EXTENSION
-  ROHR LEASEHOLD TO BE RELINQUISHED

NO SCALE

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