

CALENDAR ITEM

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C. Fossum

**CONSIDER A CONTRACT FOR ACQUISITION OF A PARKING LOT FOR THE
SAN DIEGO CONVENTION CENTER BY THE SAN DIEGO UNIFIED PORT
DISTRICT, IN THE CITY OF SAN DIEGO, SAN DIEGO COUNTY.**

PARTIES

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

City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101
Attention: Les Girard, Assistant City Attorney

SUMMARY

The San Diego Unified Port District (Port) has submitted, to the California State Lands Commission (CSLC or Commission) for its review and approval, a contract between the Port and the City of San Diego (City) that provides for the sale by the City to the Port of four blocks of land, improved for parking lot purposes in conjunction with the expansion of the San Diego Convention Center, for \$21,000,000. Staff has concluded that the contract, as submitted, does not satisfy the requirements of law and recommends certain conditions that, if complied with, would fulfill the necessary legal requirements. Staff's recommendations are, therefore, for denial as submitted and approval as conditioned.

BACKGROUND

The Port is trustee of tide and submerged lands granted to it by the Legislature pursuant to Chapter 67, Statutes of 1962, 1st Extraordinary Session, as amended. The

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Convention Center and its expansion are located on filled Port trust lands. The subject contract, "Purchase and Sale Agreement and Joint Escrow Instructions by and between City of San Diego, a Municipal corporation 'Seller' and San Diego Unified Port District, a public corporation 'Purchaser' Dated As Of 8 February, 2000," was submitted for Commission review and approval on February 22, 2000.

The Final Environmental Impact Report (EIR) for the Convention Center expansion project was approved by the Port in 1995. That EIR describes a post expansion anticipated need for approximately 129 to 3418 parking spaces, with a typical weekday demand of 1000 spaces. Onsite parking provides 1150 spaces. The EIR identified anticipated parking deficits on 150 days out of the year -- 54 on weekdays and 96 on weekends. That equates to 41% of the year. The expansion project eliminated 1700 existing overflow parking spaces previously used for the existing Convention Center. The EIR provided for mitigation of parking impacts by a Parking Management and Monitoring Program (November 9, 1995) which identified a number of existing parking facilities in the vicinity of the Convention Center that by letter agreements would be available for the expanded Convention Center.

Since the 1995 EIR and Parking Management Program were adopted, a number of the identified parking facilities have closed. As of March 1999, 5978 spaces were still available within walking distance of the Convention Center. However, by July 2000 the number had shrunk by 773 and an additional 1406 spaces were expected to close before the opening of the Convention Center expansion. Of the 28 lots open in March of 1999 only eight are expected to remain so. In order to comply with the parking needs for the Convention Center expansion the Purchase and Sale Agreement calls for delivery of the improved parking facility to the Port by the opening of the expanded Convention Center to the public. Delays caused by Force Majeure events allow for performance extension. The Convention Center expansion, which roughly doubles the existing facility, has been under construction for several years and is anticipated to be open for business in less than six months.

Subsequent to the certification of the EIR for the Convention Center expansion, the City of San Diego embarked on a major redevelopment project on lands lying southeast of the Gaslamp District and northeast of the Convention Center. A major element of that project is a new baseball park for the San Diego Padres Baseball Club (Padres). The general vicinity of the redevelopment, including the Convention Center expansion, parking lots and ballpark can be seen on Exhibit B. Exhibit B is a conceptual design of the redevelopment area by Roma Design Group, dated September 28, 1999. It was developed for the Padres in conjunction with the ballpark/redevelopment project. The

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major parties involved in the redevelopment project, other than the Port, entered into an agreement, "Memorandum of Understanding between the City of San Diego, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation, and Padres L.P. concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project."

That agreement (MOU) was entered into following the election on November 3, 1998, at which 60% of the voters in San Diego approved the MOU. The MOU provides for the creation of a Ballpark District and sets forth certain responsibilities and commitments of the respective parties relating to both a new ballpark and redevelopment of the area surrounding it. The costs and funding of the project were set forth in the MOU as follows:

1.	Costs:		
	Ballpark		\$267,500,000
	Land Acquisition and Infrastructure		\$143,500,000
	Total		\$411,000,000
2.	Funding:		
	Ballpark:		
	Padres/Private	\$ 81,000,000	
	City	\$186,500,000	
	Total	\$267,500,000	
	Land Acquisition and Infrastructure:		
	Padres/Private	\$ 34,000,000	
	City/CCDC	\$ 88,500,000	
	Other	\$ 21,000,000	

During the process of adopting the MOU, the City approached the Port with a request to assist in the redevelopment project by participation with a commitment to pay the above listed \$21,000,000 unfunded land acquisition and infrastructure improvement costs, including public parking. Discussions and negotiations between the Port and City over details of the Port's participation began in late 1998 and lasted until early 2000. The Board of Port Commissioners approved the subject Purchase and Sale Agreement on January 25, 2000. The Board ratified that action on February 2, 2000 and submitted it to the Commission for review and a request for approval on February 22, 2000. Since that time the CSLC staff has requested additional information from the Port in order to fully understand the proposed transaction and determine whether it meets the legal criteria discussed in the next section. CSLC staff has had several meetings with Port staff seeking to clarify the transaction. While the City does not presently own the lots it

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intends to acquire them by purchase or condemnation and remediate and improve them as parking lots for Convention Center use prior to close of escrow with the Port.

In opposition to the Purchase and Sale Agreement, a San Diego resident, Harvey Furgatch and his representatives have submitted information relating to the proposed acquisition. Mr. Furgatch is presently involved in two lawsuits with the Port involving the Purchase and Sale Agreement. Staff was informed that in a reverse validation action challenging the agreement, the trial court dismissed the action for failure to join the City. This case was appealed and recently briefed and argued before a state appellate court. In the other case, involving alleged violations of the Brown Act and Public Records Act, on April 17, 2001, the trial court issued its ruling which found no violation of the Brown Act, but found the Port violated the Public Records Act for failure to timely provide public documents. In addition to those two cases, nearly a dozen other lawsuits have been filed in San Diego relating to the ballpark/redevelopment project. The City has informed staff that they have been successful in each legal challenge -- including those at the appellate court level and in denial of appeals to the Supreme Court. Two suits are currently pending, the first is awaiting a ruling on the City's demurrer to an amended complaint, following the court sustaining the City's demurrer to the original complaint; the second suit was brought by the City to validate the City Council's action on re-approving the redevelopment project.

LEGAL REQUIREMENTS

Because the proposed transaction involves the capital expenditure by the Port of funds in excess of \$1,000,000 off of Port property, the expenditure must first be reviewed and approved by the CSLC 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 (PRC) Sections 6701, *et seq.*

In order to approve a submitted contract 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.
- (3) That such lease, contract, or other instrument is in the best interests of the state.

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Title 2, California Code of Regulations, Section 2802 requires that, in order to make the finding that the contract is in the best interest of the State, the Commission is to analyze whether the use, project or activity permitted by the contract is:

- (a) Consistent with current Commission policies, practices and procedures used for administering lands within its jurisdiction;
- (b) economically viable, necessary and desirable;
- (c) appropriate for developmental mix;
- (d) conducive to public access;
- (e) consistent with environmental protection;
- (f) otherwise in the best interests of the state.

PROPOSED TRANSACTION ELEMENTS

The Purchase and Sale Agreement is a relatively complex contract involving elements of price, phased payments, escrow, partial satisfaction, title exceptions (including CC&Rs), environmental remediation obligations, liability, indemnification, conditions of closing and repurchase rights. The proposed lots are shown on Exhibit C as Lots P5, P6, B2 and B3. These lots, consisting of 44 separate parcels, and portions of three others, are located at a walking distance of approximately 2210 feet from the entrance to the Convention Center expansion (east entrance). That equates to a 10 to 15 minute walk and is comparable to the distance from the two nearby hotels on Port property, the Marriott (2015 feet) and the Hyatt Regency (3506 feet).

LANDS

The proposed acquisition as described in the February 8, 2000 Purchase and Sale Agreement and approved by the Port on February 2, 2000 consists of four city blocks within the area bordered by 12th (Street) Avenue and 14th (Street) Avenue and K Street and Imperial Avenue. The original acreage, as approved by the Port, contains approximately 5.31 acres or 231,708 square feet as shown below:

- 1) Lot P5 – consisting of 1.18 acres (51,414 square feet)
- 2) Lot P6 – consisting of 1.37 acres (59,806 square feet)
- 3) Lot B2 – consisting of 1.39 acres (60,715 square feet)
- 4) Lot B3 – consisting of 1.37 acres (59,773 square feet)

The Port's appraisal of July 5, 2000 describes the area to be acquired as 318,309 square feet. The most recent information from the Port (received April 16, 2001) describes the lots as containing 233,762 square feet (Exhibit C). An estimate of acreage done by CSLC staff of the parking area as shown on the

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September 28, 1999 Roma Design Group illustration calculates the square footage as 283,140 (this assumes narrowing of 12th and 13th Avenues and closure of L Street).

Because land value issues are one factor analyzed in determining the economic desirability of the project (Title 2, CCR §2802 (b)), the actual area to be purchased is crucial in evaluating the market value and to determine whether the project is in the best interests of the state (PRC §6702 (b) (3)).

MONEY

The price stated for purchase of the four lots is capped at \$21 million. The price includes:

- acquisition costs -- whether by purchase or eminent domain
- remediation costs -- City's obligation is to remove or remediate contamination of lots by hazardous materials to a level sufficient to operate the lots for the purpose of a surface parking lot and to indemnify and hold harmless the Port for costs related to any Environmental Claim or violation of Environmental Law for any contamination that existed on the property prior to the closing of escrow or refund date
- improvement costs -- demolition, abatement, soft costs, street narrowing, curb, gutter, sidewalk, paving, striping, lighting, fencing, landscaping, irrigation and all other improvements necessary to cause the lots to be suitable for use as a surface parking facility by persons attending the San Diego Convention Center. (November 9, 1999 City estimates of \$4,759,300.)
- cost overruns -- Port's costs capped at \$21 million; City responsible for any additional costs
- phased payments -- the port is to pay \$7 million to the City five days after approval by the CSLC; the additional \$14 million is to be placed in escrow five days following successful bond financing; the City can draw on the escrow funds as needed to complete acquisition, remediation and improvements
- repayments to Port -- if City fails to perform or meet obligations in a timely manner (Refund Date), Port is entitled to refund of certain funds. These

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funds include both funds remaining in escrow plus the initial deposit of \$7 million plus interest. In addition, if the City has conveyed the right of possession to any of the lots to the Port, it agrees to proceed to acquire title to the lots at the City's sole expense.

REMEDICATION

City's obligation is to remove or remediate contamination of hazardous materials from the lots to a level sufficient to operate the lots for the purpose of a surface parking lot. The agreement further obligates the City to indemnify, defend and hold the Port harmless from all claims and damages resulting from any environmental claim or violation of environmental law arising out of any contamination of the lots which existed before closing.

IMPROVEMENTS

City is obligated to deliver the lots improved to the reasonable satisfaction of the Port in a condition "suitable for use as a surface parking facility by persons attending the San Diego Convention Center." This includes, but is not limited to, paving, striping, lighting, fencing, landscaping, and street, streetscape and other offsite improvements required in connection with the operation of the parking lots.

TITLE EXCEPTIONS

The Purchase and Sale Agreement requires the City to deliver to the Port a Preliminary Title Report and an ALTA/ACSM survey of each of the lots. The Port is given certain time frames in which to object to exceptions to title and if not objected to the exceptions become "Permitted Exceptions." Permitted Exceptions is also defined to include covenants, conditions and restrictions (CC&Rs) on the lots relating to the lots use for surface parking only during the existence of the downtown ballpark. The MOU has additional conditions which if imposed on the property could affect value. A provision that all game and event day net revenues go to the Padres and that the first \$250,000 of net revenues from non-game days and non-event days be placed into a Capital Expenditure Reserve Fund would, for example, likely eliminate any income to the Port.

REPURCHASE

The Purchase and Sale Agreement provides a right in the City that it may elect to repurchase the property from the Port, if the Port is legally authorized to sell the property. This right provides that the repurchase price is \$21,000,000 if exercised within five years of closing. Thereafter the price would be the greater

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of \$21,000,000 or the fair market value without any use restrictions as authorized to be imposed in the Purchase and Sale Agreement.

SOURCE OF ACQUISITION FUNDS

All funds to be used by the Port for acquisition of the subject property are to come from funds received by the Port (pursuant to Section 57.5 of Chapter 67, Statutes of 1962, 1st Ex. Sess., as amended) as rental car transaction fees from cars rented on Port property at the airport. These fee revenues are earmarked only for parking facilities for the Convention Center and will be used to pay the costs of acquisition either directly or to secure the payment of bonds authorized to be used to fund the acquisition.

PUBLIC BENEFITS

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

- provide additional parking for those who use the expanded Convention Center (public access to tidelands trust property)
 - Public
 - Employees
 - Exhibitors
- provide staging area for vehicles needed for on/offloading at the Convention Center
 - Exhibitors Set-up crews
 - Vendors
- acquire the closest surface parking available for large number of vehicles
- satisfy EIR requirements for adequate parking
- acquire valuable parcel of land at capped costs, without risks of eminent domain proceedings and unpredictable jury award
- acquire land which will generate income; ancillary benefit not primary intent for acquisition
- acquire land fully improved for parking lot use, without cost risks of potential remediation and improvement overruns
- acquire necessary parking facilities without drawing from Port general fund revenues -- special airport rental car fee only useable for Convention Center parking is source of payments

The Port characterizes the proposed acquisition as an essential element necessary to support the expanded Convention Center and adjacent development along the waterfront of San Diego Bay. The expansion of the Convention Center and

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redevelopment of nearby lands is intended to enhance the use of the Port's visitor serving facilities and increase the economic and use value of underutilized Port properties and the neighboring area and result in numerous public benefits.

STAFF ANALYSIS

The Commission staff has reviewed the submittal of information for the proposed expenditure of Port funds pursuant to Section 30.5 of Chapter 67, Statutes of 1962, 1st Ex. Sess., as amended and Public Resources Code Section 6701, *et seq.* The information reviewed includes EIRs, an appraisal, survey information, hazardous material site characterization Phase 1 and 2 reports, and other studies and information submitted, both pro and con, involving the proposed acquisition.

As previously noted, after reviewing the materials received from the Port, staff sought additional information and clarification on several aspects of the proposed transaction. The primary issues involved valuation, restrictions on title and utility. These issues go to the fundamental issue of whether the transaction is in the best interests of the state.

CSLC staff has analyzed the proposal and estimates an internal rate of return to the Port on its proposed investment of of 3.5% to 5.5%. Given the dollar costs to the Port associated with this transaction (\$21,000,000) the rate of return expected, by a typical investor for this type of property and use (parking lot), would be higher.

Based upon CSLC staff analysis this acquisition would not qualify as economically desirable solely from an income capitalization approach to valuation. Even though a parking lot is an income producing property type, the Port's appraisal did not utilize this approach. The Port's appraisal also does not utilize a cost approach; instead it relies solely on a sales comparison approach.

The Port appraisal's sales comparison approach also does not fully support the transaction in the Purchase and Sale Agreement:

- 1) it assumes that the lands acquired will total 318,309 square feet
- 2) the appraisal's conclusion is that the value of the property restricted to use as a parking lot is \$19.1 million, subject to the assumed MOU rights of the Padres

However, the Port's position is that these lands are to be acquired to fulfill a legal and practical need to provide adequate parking for public use of visitor serving facilities on Port property, not to generate direct income. The port also points out that the primary purpose of the acquisition is public access and is part of City approved redevelopment

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project and is clearly appropriate to developmental mix. Therefore, they assert, the project is economically viable necessary and desirable, regardless of the less than typical investment rate of return.

As a result of disagreement with the methodology and conclusions contained in the Port's appraisal, CSLC staff conducted an independent analysis which:

- 1) Determined that the Highest and Best Use of the subject property
 - a) as submitted by the Port in the Purchase and Sale Agreement and encumbered by the title and use restrictions of the MOU -- is for development of a surface parking lot
 - b) if unencumbered by the title and use restrictions in the MOU, free and clear of environmental conditions that exceed regulatory thresholds and available for immediate development consistent with legally permissible uses -- is high density development
- 2) Estimated that the market value of the fee simple of the subject property
 - a) improved as a finished parking lot, containing 233,762 square feet, encumbered by the title and use restrictions of the MOU is \$12,400,000.
 - b) free and clear of environmental conditions that exceed regulatory thresholds, available for immediate development to its highest and best use, containing 233,762 square feet, unencumbered by the title and use restrictions of the MOU is at most \$22,075,000

How the property will be managed to benefit the Convention Center and what income is anticipated to be generated goes to both the issues of utility to the Convention Center and economic desirability for the Port. Therefore, CSLC staff sought information on the proposed operating agreement or lease. On April 1, 2001 CSLC staff received, from the Port, a draft Letter of Intent (dated March 29, 2001) outlining a proposed Convention Center Parking Lots Lease Agreement. The proposal set forth several terms the Port is considering to be included in a lease of the parking lots for management by the Padres:

- 1) 30 year term
- 2) rent to Port
 - a) 50% of net revenues (gross revenues less reasonable operating expenses) until the opening of the downtown ballpark
 - b) 25% of gross revenues for the successive four years
 - c) 35% of gross revenues for the remainder of the lease
 - d) minimum rent \$150,000 the first year the ballpark is open increased by 4% annually thereafter

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- 3) parking lots to be improved by the City; Padres to cooperate with Port and City to ensure improvements are designed and implemented so as to maximize the utility of the Parking Lots for Convention Center parking, including opportunities for using the Parking Lots for bus and truck staging for Convention Center Corporation events.
- 4) Padres to operate, maintain and, as necessary, further improve the Parking Lots during the term of the lease so as to maintain their utility for use as Convention Center parking. The Padres shall be entitled to the exclusive use of the parking Lots for use as parking for the New Ballpark for all San Diego Padres home games and events. Parking for Padres games and events will be limited to the period beginning two hours before the scheduled start of each game or event. Other than the exclusive rights granted above, the Parking Lots shall be open to the public for general parking.

STAFF CONCLUSIONS

The proposed acquisition is for parking (public access) in conjunction with the expanded Convention Center on port property and 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.

Staff believes the proposed acquisition as provided in the February 8, 2000 Purchase and Sale Agreement, and the draft Letter of Intent involving the proposed Lease Agreement, should not be approved as submitted, because of the problems with value, utility and management. Staff recommends approval of a modified Purchase and Sale Agreement, together with a lease or other operating agreement which provides sufficient detail to understand the full costs and benefits of the transaction, upon their being modified and submitted as outlined below.

The recommendation of denial of the agreements as submitted is based upon several elements of the transaction:

- A. Valuation -- the July 5, 2000 appraisal submitted by the Port does not support the \$21 million contract price for the Port's to be acquired interest in the property. While the appraiser does conclude \$21 million for the fee simple value, he then reduces the value to the Port by \$1.9 million for the value of the rights he attributes to accrue to the Padres under the terms of the MOU. The value of the Port's interest, according to the Port's appraisal, is \$19.1 million. The Port's

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appraisal is based on an assumed area of 318,309 square feet, which appears to be erroneous based upon subsequent information. While the latter assumption (certain rights of exclusive use by the Padres) is based upon the MOU, it is an unacceptable restriction on property to be held for Port Convention Center purposes and negatively impacts value.

The Purchase and Sale Agreement requires the City to deliver to the Port a Preliminary Title Report and an ALTA/ACSM survey of each of the lots. The Port is given certain time frames in which to object to exceptions to title and if not objected to the exceptions become "Permitted Exceptions." Permitted Exceptions is also defined to include covenants, conditions and restrictions (CC&Rs) on the lots relating to the lots use for surface parking only during the existence of the downtown ballpark. This authorization permits unknown limitations on title and use and could therefore potentially severely impair the potential value of the property. Therefore, staff believes it cannot recommend approval as submitted.

- B. Utility to Port / Convention Center – the restrictions laid out in the Purchase and Sale Agreement relating to exceptions to title include any additional CC&Rs restricting the Port's use of the property. This deed restriction on use impacts not only value -- but utility for the Port's intended use. The provision that provides for exclusive use by the Padres during home game days (82) and event days (43) and provides for general public parking at other times excludes the general public and Convention Center attendees for a significant number of days and severely limits the utility of the property to the Port. Additionally, how the lots are to be operated for the Convention Center is critical to analyzing their utility. Paragraph 4 of the March 29, 2001 draft Letter of Intent to lease proposes to give the Padres exclusive use of the property during over one-third of the year.

In order to find that the subject contract is in compliance with the review requirements of Public Resources Code Section 6702, *et seq.*, staff recommends conditions of Commission approval requiring incorporating the following elements in a revised contract:

- A. Valuation
Conveyance of title to the property shall include the four lots (233,762 square feet) and not the adjacent streets with the lots unencumbered by CC&Rs related to limitations on use, delivered to the Port by the City as an operating parking lot and the price shall be no more than \$21 million.

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The revised Purchase and Sale Agreement and lease shall additionally provide the following:

Purchase and Sale Agreement

- 1) any right to repurchase the property within five years by the City, shall include a CPI adjustment in addition to the \$21,000,000.
- 2) should the Port desire, and be authorized by law, to use the property for a different use or to sell the subject property, whether to the City or a third party then:
 - a) the Port shall contract for an independent appraisal, the appraiser's analysis shall include a Phase 2 assessment report (ASTM E 1903-97 standard) and include a comparison of the impact, if any, on the property's value of the Phase 2 assessment with the assumption that the property is available at its highest and best use, without limitation due to environmental conditions that exceed regulatory thresholds, and
 - b) if the conclusions of value indicate that there is a diminution in value, attributable to the existence of an environmental condition, in excess of \$1,000,000; the city shall be responsible to either:
 - (1) remediate the site to a level consistent with its highest and best use, or
 - (2) purchase the property at the remediated value as established in a) above, or
 - (3) compensate the Port for the diminution in value from the highest and best use
 - c) the port shall be responsible for the first \$1,000,000 in remediation costs or value diminution.
- 3) there will be no parking validation agreements which result in reducing the Port's income.
- 4) there will be no \$250,000 annual payment into a Capital Expenditure Reserve Fund out of gross revenues or net revenues due the Port as described in the MOU

Lease

The parking lots shall be operated so that they are open for general public parking and not the exclusive use of the Padres; the use of the lots may be restricted to parking use only during game days and no more than ten event days; revenues may be set at different

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rates during different periods as the Port and Padres or other operator may agree and rent shall be no less, as provided in the March 29, 2001 draft Letter of Intent.

- B. Utility – the terms of any amended Purchase and Sale Agreement, any deed, or any lease or other operating agreement for use of the subject lots (Substitute Agreements) shall not exclude members of the public from using the lots for accessing the Convention Center or any other Port public trust properties. Additionally, any such agreements shall provide that the lots be available for other uses by the Port, not just for parking purposes, during periods when such other uses are not expected to interfere with the parking needs for the lots.

CSLC staff has reviewed the proposed Purchase and Sale Agreement and believes all necessary legal elements have not been met. Staff believes the issue of value and utility preclude an affirmative finding necessary for approval under PRC Section 6702 (b). Staff therefore recommends that the Commission deny approval of the Purchase and Sale Agreement dated 8 February 2000. Staff further recommends that should a modified Purchase and Sale Agreement and Lease be submitted that meet the necessary criteria as described and set forth in the recommended findings, that the Commission direct the Executive Officer to approve the modified agreement.

EXHIBITS:

- A. Location map
- B. Roma Design Group Ballpark Area Conceptual Plan
- C. Site map showing parcels involved
- D. Aerial photo of vicinity

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061, BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS SECTION 15378.
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 SAN DIEGO UNIFIED PORT DISTRICT HAS SUBMITTED AN APPLICATION FOR REVIEW AND APPROVAL OF A CONTRACT ENTITLED

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"PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BY AND BETWEEN CITY OF SAN DIEGO, A MUNICIPAL CORPORATION 'SELLER' AND SAN DIEGO UNIFIED PORT DISTRICT, A PUBLIC CORPORATION 'PURCHASER' DATED AS OF 8 FEBRUARY, 2000"; WHICH INCLUDES THE PROPOSED EXPENDITURE OF \$21,000,000 OF PORT FUNDS FOR THE ACQUISITION OF CERTAIN PROPERTY FOR PARKING PURPOSES IN CONJUNCTION WITH THE SAN DIEGO CONVENTION CENTER.

3. FIND THAT THE PURCHASE AND SALE AGREEMENT AS SUBMITTED DOES NOT MEET THE CRITERIA OF PUBLIC RESOURCES CODE SECTION 6702 (b) AND TITLE 2, CALIFORNIA CODE OF REGULATIONS SECTION 2802 FOR THE REASONS STATED HERE AND ABOVE AND INCORPORATED BY REFERENCE.
4. FIND THAT THE FOLLOWING AGREEMENT AND LEASE PROVISIONS ARE NECESSARY FOR APPROVAL OF A REVISED PURCHASE AND SALE AGREEMENT:
 - A. THE PURCHASE PRICE SHALL NOT EXCEED \$21,000,000.
 - B. ANY RIGHT TO REPURCHASE THE PROPERTY WITHIN FIVE YEARS BY THE CITY, SHALL INCLUDE A CPI ADJUSTMENT IN ADDITION TO THE \$21,000,000 PURCHASE AMOUNT.
 - C. SHOULD THE PORT DESIRE, AND BE AUTHORIZED BY LAW, TO USE THE PROPERTY FOR A USE OTHER THAN AS PARKING LOT OR SELL THE SUBJECT PROPERTY, WHETHER TO THE CITY OR A THIRD PARTY THEN:
 - 1) THE PORT SHALL CONTRACT FOR AN INDEPENDENT APPRAISAL, THE APPRAISER'S ANALYSIS SHALL INCLUDE A PHASE 2 ASSESSMENT REPORT (ASTM E 1903-97 STANDARD) AND INCLUDE A COMPARISON OF THE IMPACT, IF ANY, ON THE PROPERTY'S VALUE OF THE PHASE 2 ASSESSMENT WITH THE ASSUMPTION THAT THE PROPERTY IS AVAILABLE AT ITS HIGHEST AND BEST USE, WITHOUT LIMITATION DUE TO ENVIRONMENTAL CONDITIONS THAT EXCEED REGULATORY THRESHHOLDS
 - 2) IF THE CONCLUSIONS OF VALUE INDICATE THAT

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THERE IS A DIMINUTION IN VALUE ATTRIBUTABLE TO THE EXISTENCE OF TOXIC CONDITIONS OR HAZARDOUS WASTE IN EXCESS OF \$1,000,000; THE CITY SHALL BE RESPONSIBLE TO EITHER:

- (A) REMEDIATE THE SITE TO A LEVEL CONSISTENT WITH ITS HIGHEST AND BEST USE, OR
 - (B) PURCHASE THE PROPERTY AT THE REMEDIATED VALUE AS ESTABLISHED IN 4.C.1) ABOVE, OR
 - (C) COMPENSATE THE PORT FOR THE DIMINUTION IN VALUE FROM THE HIGHEST AND BEST USE
- 3) THE PORT SHALL BE RESPONSIBLE FOR THE FIRST \$1,000,000 IN REMEDIATION COSTS OR VALUE DIMINUTION.
- D. THERE WILL BE NO CC&RS OR OTHER ENCUMBRANCES ON TITLE WHICH SIGNIFICANTLY IMPACT VALUE OR USE OF THE PROPERTY.
- E. THERE WILL BE NO PARKING VALIDATION AGREEMENTS WHICH RESULT IN REDUCING THE PORT'S INCOME.
- F. THERE WILL BE NO \$250,000 ANNUAL PAYMENT INTO A CAPITAL EXPENDITURE RESERVE FUND OUT OF GROSS REVENUES OR NET REVENUES DUE THE PORT.
- G. THE PARKING LOTS SHALL BE OPERATED SO THAT THEY ARE OPEN FOR GENERAL PUBLIC PARKING AND NOT THE EXCLUSIVE USE OF THE PADRES; THE USE OF THE LOTS MAY BE RESTRICTED TO PARKING USE ONLY DURING GAME DAYS AND NO MORE THAN TEN EVENT DAYS; REVENUES MAY BE SET AT DIFFERENT RATES DURING DIFFERENT PERIODS AS THE PORT AND PADRES OR OTHER OPERATOR MAY AGREE.
- H. LEASE RENTAL RATES SHALL PROVIDE AT A MINIMUM
- 1) 50% OF NET REVENUES UNTIL OPENING OF THE NEARBY PADRES BALLPARK;

CALENDAR ITEM NO. 115 (CONT'D)

- 2) 25% OF GROSS REVENUES FOR THE FIRST FOUR YEARS FOLLOWING OPENING OF THE PADRES BALLPARK; WITH A MINIMUM ANNUAL RENT OF \$150,000, INCREASED ANNUALLY BY FOUR PERCENT.
 - 3) 35% OF GROSS REVENUES FOLLOWING THE PREVIOUS FOUR YEAR PERIOD; WITH THE PRIOR MINIMUM ANNUAL RENT INCREASED ANNUALLY BY FOUR PERCENT
5. FIND THAT, UPON SUBMITTAL OF A MODIFIED PURCHASE AND SALE AGREEMENT AND LEASE AS DESCRIBED IN FINDING 4 ABOVE WITH WRITTEN CONFIRMATION BY THE EXECUTIVE OFFICER AS PROVIDED IN FINDING 6 BELOW, THE FOLLOWING FINDINGS SHALL BE EFFECTIVE AS TO SAID MODIFIED PURCHASE AND SALE AGREEMENT:
- A. THE PURCHASE AND SALE AGREEMENT IS IN ACCORDANCE WITH THE TERMS OF CHAPTER 67, STATUTES OF 1962, 1ST EXTRAORDINARY SESSION, AS AMENDED.
 - B. THE LANDS TO BE ACQUIRED ARE TO BE ACCEPTED AS PUBLIC TRUST LANDS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF CALIFORNIA, TO BE HELD BY THE SAN DIEGO UNIFIED PORT DISTRICT SUBJECT TO THE PROVISIONS OF CHAPTER 67, STATUTES OF 1962, 1ST EXTRAORDINARY SESSION, AS AMENDED.
 - C. FUNDS GENERATED ON LANDS ACQUIRED SHALL BE PLACED IN A FUND OR FUNDS EXPENDABLE ONLY FOR STATEWIDE PURPOSES, CONSISTENT WITH CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED.
 - D. THE ACQUISITION AS PROVIDED FOR IN THE MODIFIED PURCHASE AND SALE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE.
 - E. THE PURCHASE AND SALE 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.

CALENDAR ITEM NO. 115 (CONT'D)

- F. THE MODIFIED PURCHASE AND SALE AGREEMENT IS APPROVED PURSUANT TO PUBLIC RESOURCES CODE SECTION 6702 (b).
6. UPON THE SAN DIEGO UNIFIED PORT DISTRICT SUBMITTING A REVISED AND FULLY EXECUTED PURCHASE AND SALE AGREEMENT, TOGETHER WITH A FULLY EXECUTED LEASE AGREEMENT INVOLVING ACQUISITION AND MANAGEMENT OF THE SUBJECT PROPERTY, CONTAINING THE PROVISIONS SET FORTH AND ADOPTED IN HEREINABOVE FINDING 4, THE EXECUTIVE OFFICER OF THE CALIFORNIA STATE LANDS COMMISSION IS HEREBY AUTHORIZED AND DIRECTED AND SHALL ON BEHALF OF THE COMMISSION CONFIRM THE COMPLIANCE WITH THE PROVISIONS IN FINDINGS 4 ABOVE AND EXECUTE A LETTER APPROVING THE MODIFIED PURCHASE AND SALE AGREEMENT AND LEASE AND REPORT HIS ACTION TO THE COMMISSION AT THE NEXT COMMISSION MEETING.

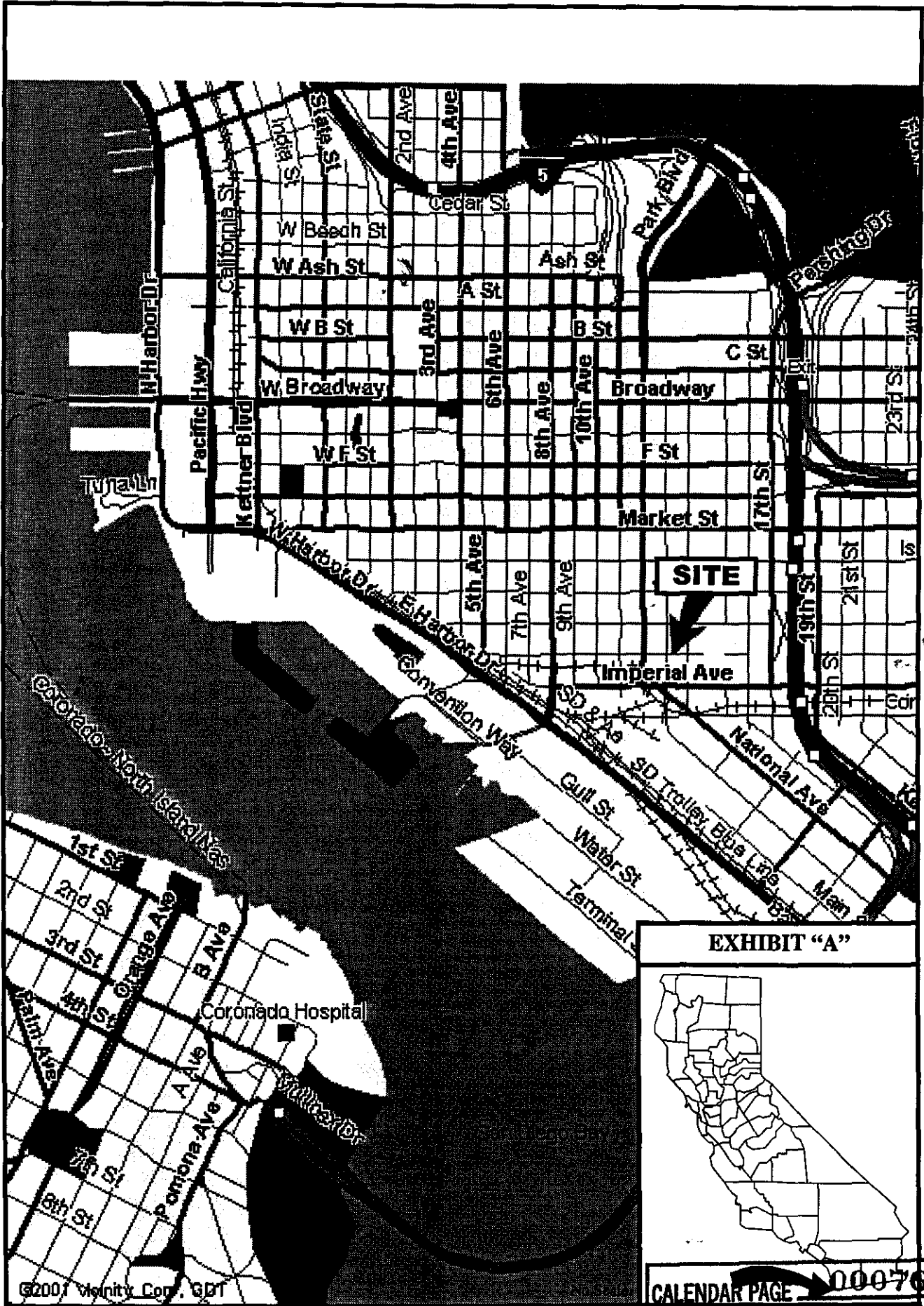
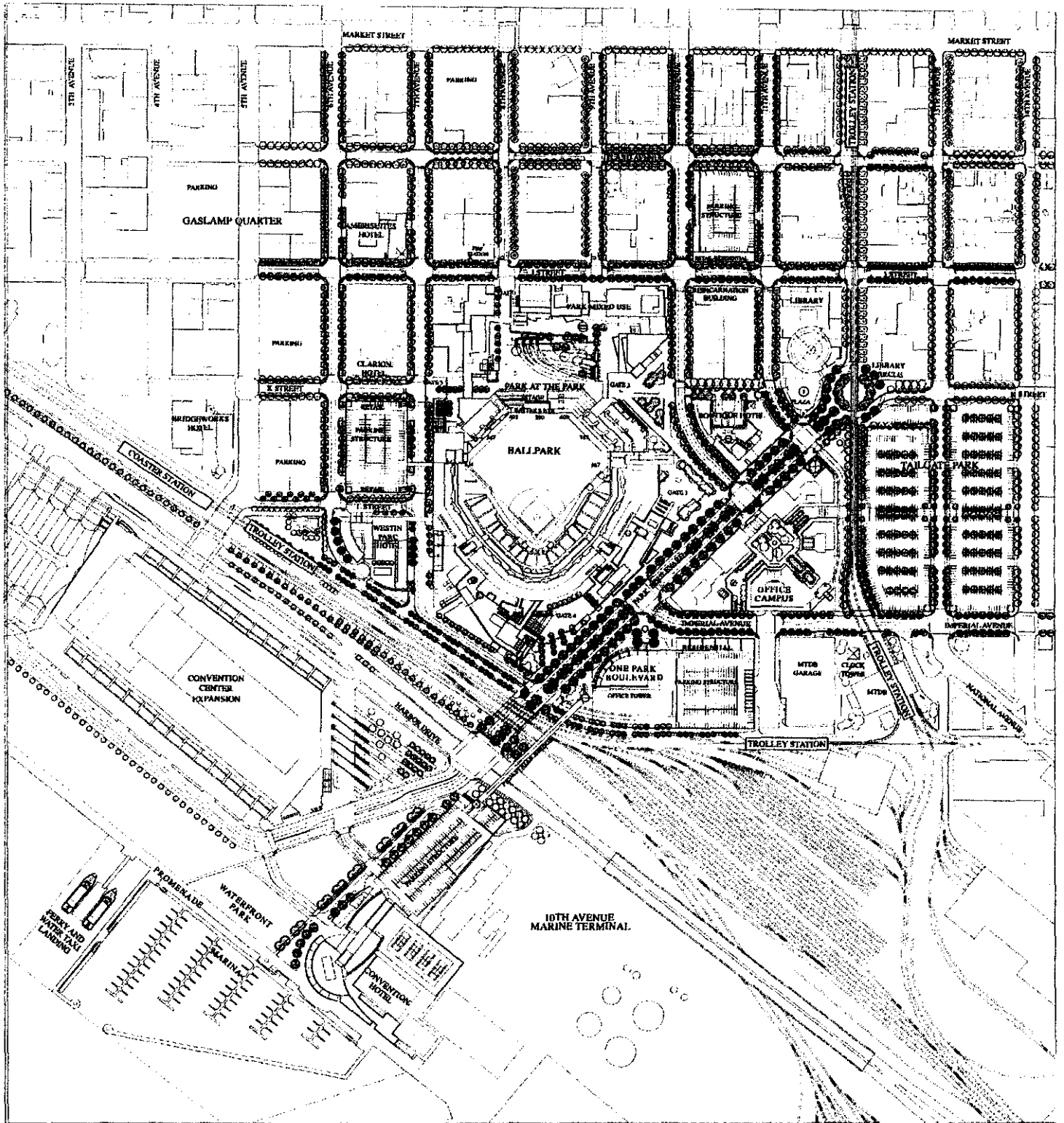


EXHIBIT "A"





URBAN DESIGN AND DEVELOPMENT PLAN
San Diego's Ballpark Neighborhood

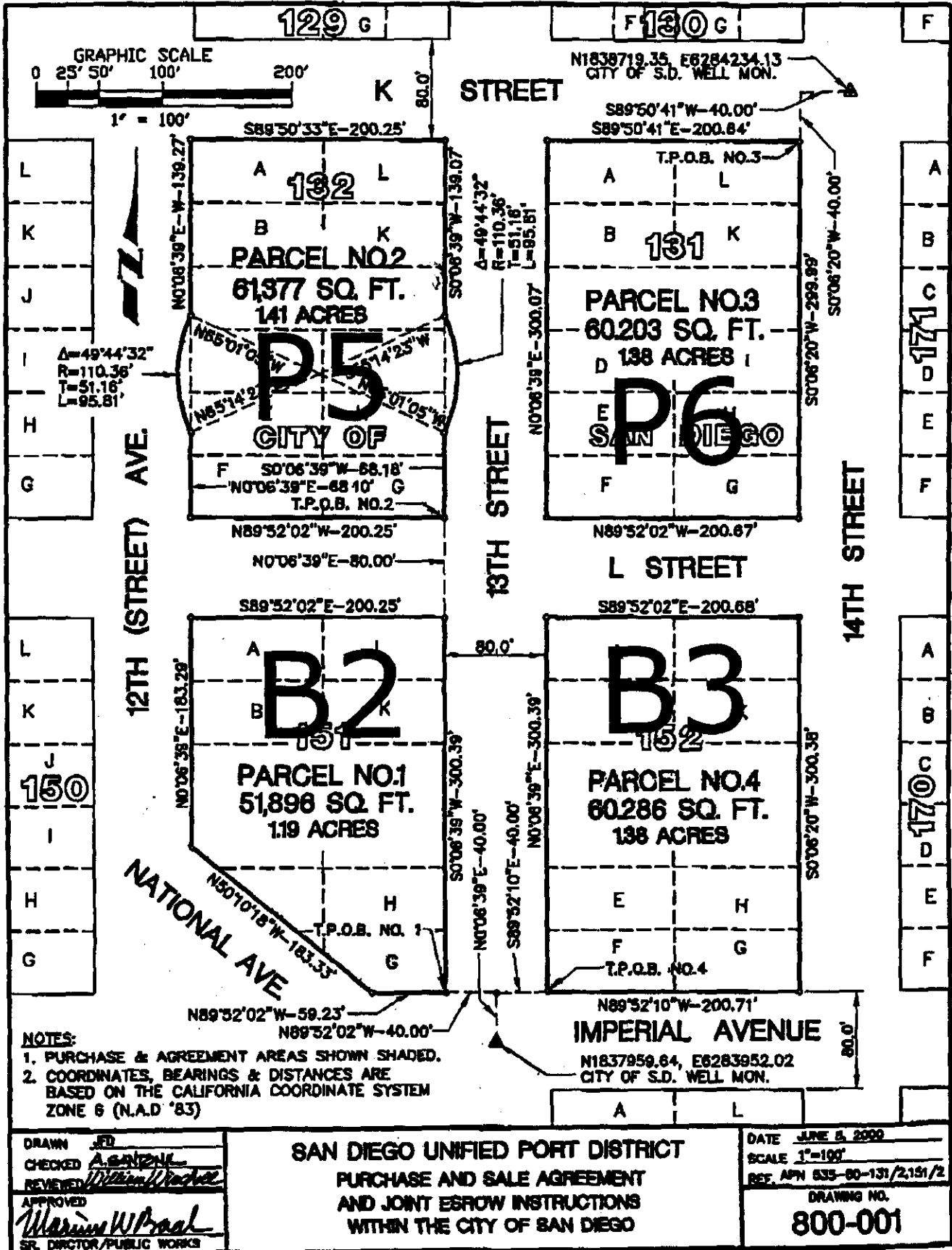
Prepared by ROMA Design Group
 28 SEPTEMBER 1999

4g

illustrative

Exhibit B

CALENDAR PAGE	000769
MINUTE PAGE	0001315



DRAWN *JFD*
 CHECKED *A. SPINALE*
 REVIEWED *William W. Prall*
 APPROVED *William W. Prall*
 SR. DIRECTOR/PUBLIC WORKS

SAN DIEGO UNIFIED PORT DISTRICT
PURCHASE AND SALE AGREEMENT
AND JOINT ESROW INSTRUCTIONS
WITHIN THE CITY OF SAN DIEGO

DATE JUNE 5, 2000
 SCALE 1"=100'
 REF. APN 535-80-131/2,151/2
 DRAWING NO.
800-001

Exhibit C

CALENDAR PAGE 000770
 MINUTE PAGE 000136

DE/SE/IV/REM/600/800-0010

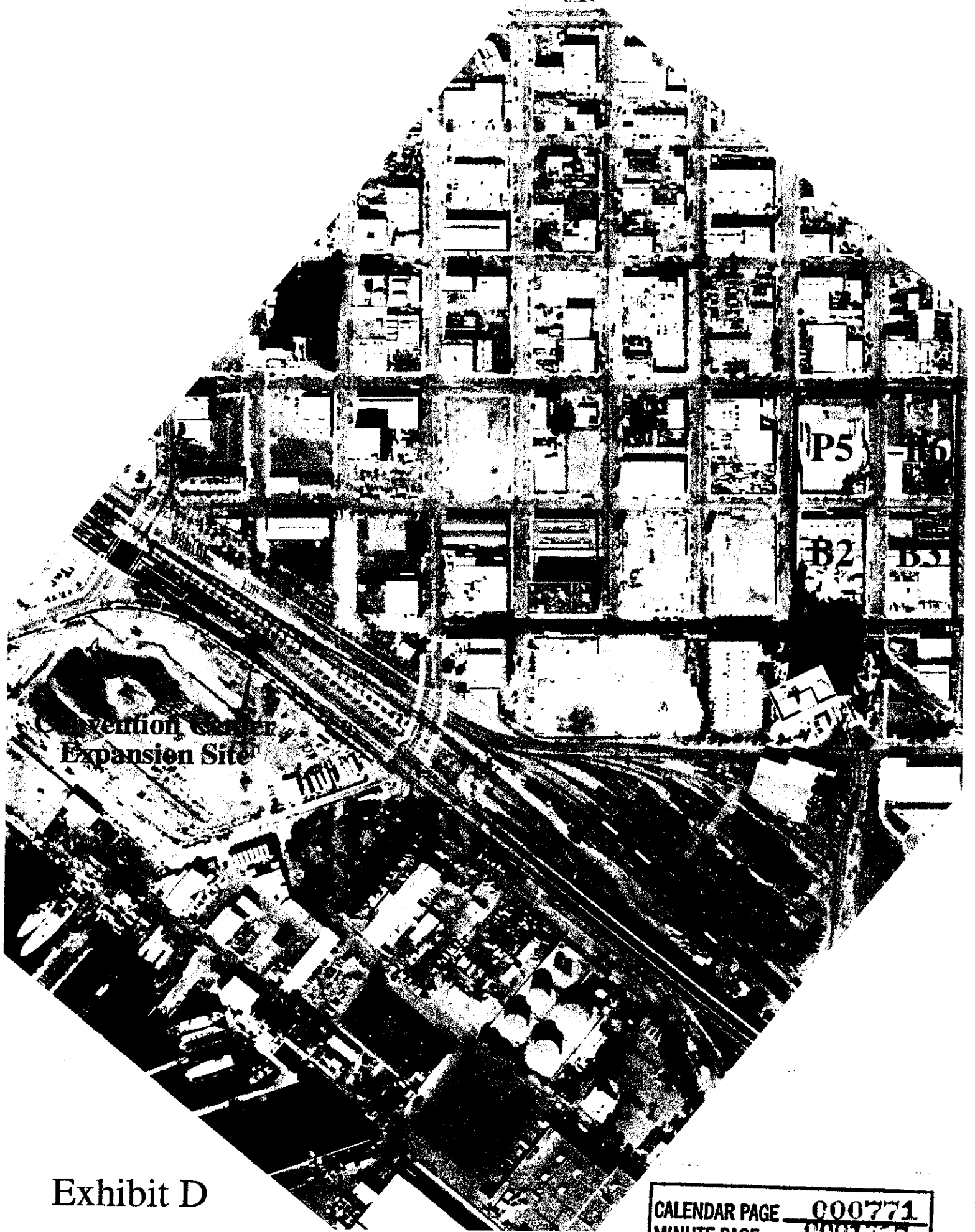


Exhibit D

CALENDAR PAGE	000771
MINUTE PAGE	000777