

MINUTE ITEM

This Calendar Item No. 21
was approved as Minute Item
No. 21 by the State Lands
Commission by a vote of 3
to 0 at its 10/26/78
meeting.

CALENDAR ITEM

21.

10/78
W 503.905
Collins

APPROVAL OF SETTLEMENT OF UNITED STATES V. 1.67
ACRES OF LAND, ET AL.

The Commission is a party to a United States condemnation action brought by the United States Attorney entitled, United States of America v. 1.67 Acres of Land, More or Less, in San Diego County; State of California; San Diego Unified Port District; et. al., filed in the United States District Court, Southern District of California, Civil No. 77-0599-T, involving lands which are sovereign tide and submerged lands granted to the San Diego Unified Port District, in trust by the State. (Chapter 700, Statutes of 1911; Chapter 67, Statutes of 1962, First Extraordinary Session).

The subject property consists of 2 filled parcels which are referred to as E and F Streets, since they are actually the extensions of those 2 streets, bounded on the west by Harbor Street and on the east by Pacific Highway, in downtown San Diego (see Exhibit "B"). These 2 parcels lies waterward of the former (natural) ordinary high tide line.

Sometime after the subject parcels were filled, the City of San Diego apparently formally dedicated them, along with certain other streets, "to the public use as and for public streets." This dedication has not been revoked or vacated. During the late 1930's the Federal government acquired most of the land fronting the parcels for the purpose of developing part of what now is referred to as the San Diego Naval Supply Center. In 1941 the Navy closed the parcels off from traffic and, since then, they have been used exclusively by the Navy for personnel parking and the loading and unloading of supplies at the adjacent supply center.

From 1941 until 1977, the Navy leased the street areas from the Port District on a yearly basis for a nominal rental of \$1. In 1973, however, the Port sought to renegotiate the terms of this yearly lease by increasing the rental to \$1100 per month, which it considered to be "fair market value". This substantial change in policy created a dispute with the Navy the result of which was the present condemnation action.

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CALENDAR ITEM NO. 21. (CONTD)

In this litigation the Navy has asserted that under federal law a taking by condemnation of a dedicated street which is no longer needed for street purposes requires only nominal compensation. While the law on this point and the facts of this particular situation are not absolutely clear, it is the opinion of the Attorney General's office that the State and Port would have a difficult time obtaining anything more than the nominal value for the subject property if the litigation was pursued to judgment. In addition, permanent transfer of title to the parcels to the Federal Government may well foreclose any future use of the parcels for public access to San Diego Bay. For these reasons an attempt to negotiate a settlement of the dispute was initiated.

The settlement negotiations resulted in a proposal, the essential elements of which are the following:

1. The Navy will stipulate that title to the subject parcels is to revert in the Port and State to the extent held by them immediately prior to the taking (see Exhibit "C").
2. The Navy will dismiss the complaint, all parties waiving any claims for damages, costs, or other compensation.
3. The Port and Navy shall, simultaneously with reversion, enter into a 66-year lease of the subject parcels at a nominal rental of \$1 (see Exhibit "D"). In this lease it is agreed that if the parcels are no longer required for Navy purposes the lease shall terminate and the parcels shall revert to the Port.

The Commission's staff and the Office of the Attorney General recommend approval of this settlement since it assures the State and the Port that the subject property will revert to tideland trust use once it is no longer needed by the Navy. The settlement avoids costly litigation which might result in only minimal compensation for the property and which, in any such case, would result in the vesting of title in the Navy, which might sell the property to private interests after such time it is no longer needed for Navy purposes.

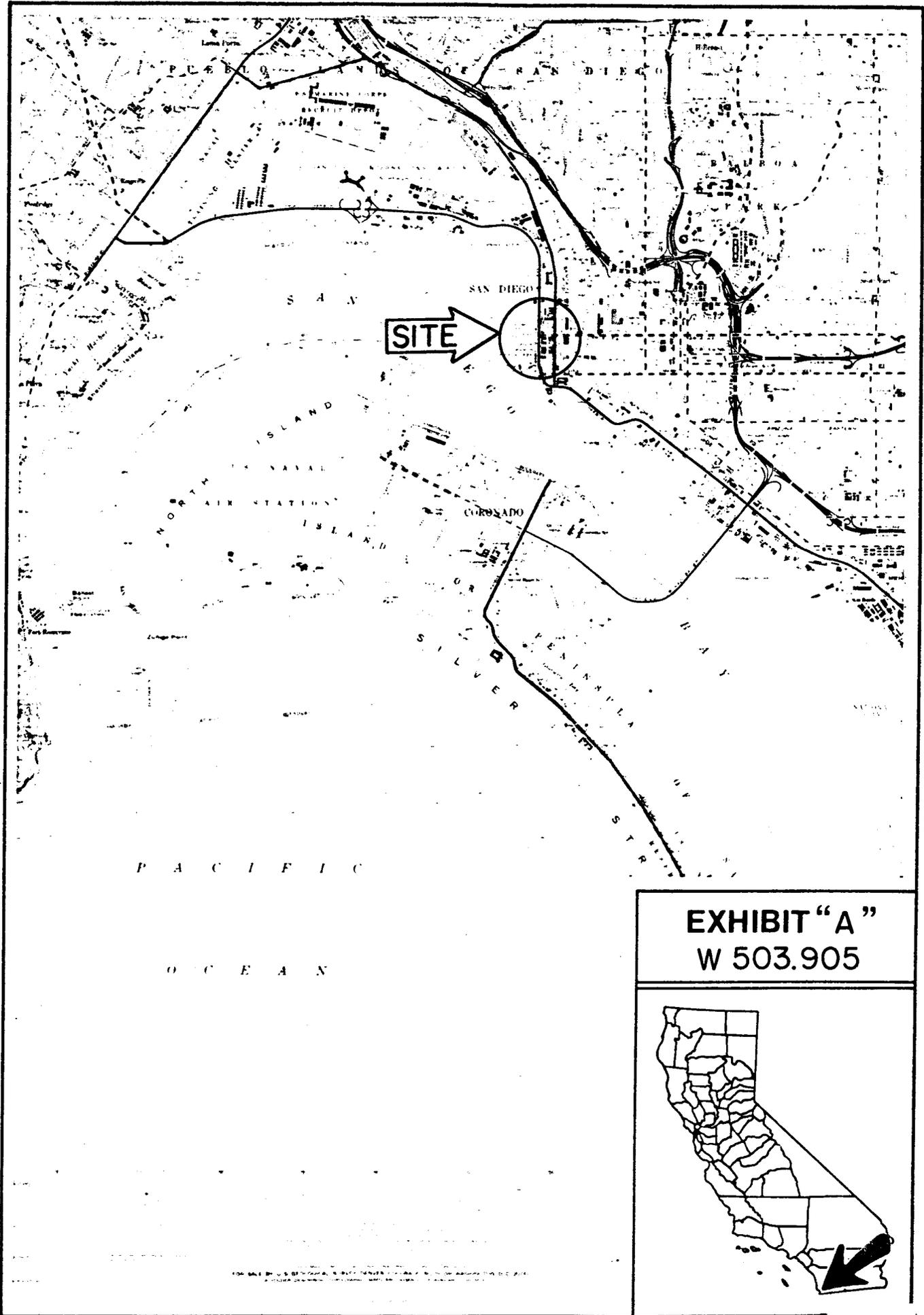
The United States Attorney has indicated that the Navy has agreed to the terms of this settlement. The attorney for the Port District is also in agreement and expects formal approval by the Board of Port Commissioners.

CALENDAR ITEM NO. 21. (CONTD)

- EXHIBITS:
- A. Location Map.
 - B. Parcel Map.
 - C. Stipulation For Revestment.
 - D. Agreement of Lease.

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE SETTLEMENT, AS OUTLINED ABOVE AND SUBSTANTIALLY SET FORTH IN THE PROPOSED STIPULATION FOR REVESTMENT AND AGREEMENT OF LEASE ATTACHED HERETO, BETWEEN THE STATE OF CALIFORNIA, SAN DIEGO UNIFIED PORT DISTRICT, AND UNITED STATES OF AMERICA.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE AND THE OFFICE OF THE ATTORNEY GENERAL TO EXECUTE THE STIPULATION FOR REVESTMENT AND TAKE ALL OTHER STEPS WHICH THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THE SETTLEMENT.



SITE

EXHIBIT "A"
W 503.905



EXHIBIT "C"

1 MICHAEL H. WALSH
United States Attorney
2 MICHAEL E. QUINTON
Assistant U. S. Attorney
3 United States Courthouse
940 Front Street, Room 5-N-19
4 San Diego, California 92189
Telephone: (714) 293-5662

5 Attorneys for Plaintiff,
6 United States of America.

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,) Civil No. 77-0599-T
11 Plaintiff,)
12 v.) STIPULATION FOR REVESTMENT
13 1.647 ACRES OF LAND, MORE OR)
14 LESS, IN SAN DIEGO COUNTY;)
15 STATE OF CALIFORNIA; SAN DIEGO)
UNIFIED PORT DISTRICT, et al.,)
and UNKNOWN OWNERS,)
16 Defendants.)
17

18 WHEREAS, the plaintiff, United States of America, commenced
19 the above-entitled action for the purpose of acquiring by eminent
20 domain certain lands described as follows, to wit:

21 The land which is the subject matter of this proceeding
22 aggregates 1.647 acres of land, more or less, situate and being in
23 San Diego County, State of California. A description of the lands
24 taken, together with the names and addresses of purported owners
25 thereof, and a statement of the sum estimated to be just compensa-
26 tion therefore, are as follows:

27 PARCEL "1"

28 COMMENCING for reference at the intersection of the
29 westerly prolongation of the southerly right of way line of Broadway
30 and the U. S. Bulkhead Line, as said Line is now established for
31 the Bay of San Diego; thence along said westerly prolongation of
32

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4/14/78

1 the southerly right of way line of Broadway, South 89° 58' 20" East,
2 175.00 feet; thence, southwesterly on a line parallel with and
3 distant 175.00 feet easterly from said Bulkhead Line, South 0°
4 01' 40" West, 300.82 feet; thence, at right angles to the last
5 mentioned course, South 89° 58' 20" East, 25.00 feet to the TRUE
6 POINT OF BEGINNING;

- 7 1) Thence, along the northerly boundary line of "E" Street,
8 South 89° 58' 20" East, 480.16 feet to the westerly
9 boundary line of the Pacific Highway;
- 10 2) Thence, along the westerly boundary line of the Pacific
11 Highway, South 0° 01' 40" West, 75.00 feet to the
12 southerly boundary line of said "E" Street;
- 13 3) Thence, along the southerly boundary line of said "E"
14 Street, North 89° 58' 20" West, 480.16 feet to the
15 easterly boundary line of Harbor Drive;
- 16 4) Thence, along the easterly boundary line of Harbor
17 Drive, North 0° 01' 40" East, 75.00 feet to the True
18 Point of Beginning.

19 Parcel "1" containing .826 Acre, more or less.

20 PARCEL "2"

21 COMMENCING for reference at the Point of Beginning for the
22 above-described Parcel "1"; thence, along the easterly boundary
23 line of Harbor Drive, South 0° 01' 40" West, 374.93 feet to its
24 intersection with the northerly boundary line of "F" Street, the
25 TRUE POINT OF BEGINNING;

- 26 1) Thence, along the northerly boundary line of said "F"
27 Street, South 80° 58' 20" East, 475.98 feet to the Mean
28 High Tide Line, as shown on Miscellaneous Map No. 42,
29 Records of said County;
- 30 2) Thence, along said Mean High Tide Line, South 1° 53'
31 20" East 75.04 feet to the southerly boundary line of
32 said "F" Street;
- 33 3) Thence, along the southerly boundary line of said "F"
34 Street, North 89° 58' 20" West, 478.49 feet to the
35 easterly boundary line of Harbor Drive;
- 36 4) Thence, along the easterly boundary line of Harbor Drive,
37 North 0° 01' 40" East, 70.00 feet to the True Point of
38 Beginning.

39 Parcel "2" containing .821 Acre, more or less.

1 WHEREAS, by reason of the filing of a declaration of taking
2 and the depositing of \$2.00 as estimated just compensation for
3 the taking thereof, title to such land, to the extent of the
4 estate described below, vested in the United States of America
5 on September 22, 1977;

6 WHEREAS, it has been determined to be necessary to revest
7 to the former owners title to the fee interest in the above-described
8 tract of land;

9 WHEREAS, the defendants State of California and San Diego
10 Unified Port District have agreed that in consideration of the
11 aforesaid and the settlement of the dispute which arose as to just
12 compensation, they are not entitled to any just compensation for
13 the interests acquired in the proceeding and have agreed further
14 that the sum of \$2.00 remaining on deposit in the registry of the
15 court shall be returned to the United States of America;

16 NOW, THEREFORE, IT IS STIPULATED AND AGREED BY AND BETWEEN
17 THE UNITED STATES OF AMERICA, PLAINTIFF, AND THE ABOVE-NAMED
18 DEFENDANTS, STATE OF CALIFORNIA AND SAN DIEGO UNIFIED PORT DISTRICT,
19 as follows:

20 A. That the defendants herein consent to the revestment by
21 the United States of the estate in the land as heretofore set forth;

22 B. That the legal description of Parcels 1 and 2 and the
23 estate acquired therein, as set forth in the Notice of Condemnation
24 and the Declaration of Taking heretofore filed in the proceeding
25 shall be deleted therefrom;

26 C. That all right, title and interest of the stipulating
27 defendants in and to any and all portions of the tract as set
28 forth in the complaint in condemnation and the declaration of
29 taking heretofore filed in the proceeding shall be excluded from
30 the proceeding and title thereto shall be revested in said
31 defendants to the extent held by them immediately prior to the
32 taking;

1 D. That the defendants in consideration of the foregoing
2 waive any and all compensation for the taking of all interest
3 acquired in the proceeding, and for the Government's use of that
4 interest in the land, title to which is revested by this
5 stipulation, including all damages arising therefrom;

6 E. That judgment shall be entered pursuant hereto in
7 accordance with the aforementioned terms and conditions.

8 In support of the foregoing stipulation, it is hereby
9 represented to the court as follows:

10 1. That this stipulation is intended as a voluntary
11 appearance and express waiver of service of notice and of all
12 other process and pleading, notice of hearing and trial by jury.

13 2. That except as aforesaid on said date no other person,
14 party or corporation was in possession of said lands and there
15 were no unrecorded liens, leases, encumbrances or transfers out-
16 standing affecting said property.

17 It is expressly understood and agreed that upon the entry
18 of this Stipulation, the defendants and counsel agree to waive
19 any and all claims of whatsoever kind including attorneys' fees
20 and any other costs.

21 WHEREFORE, the parties hereto pray for judgment as
22 appropriate to effectuate this stipulation.

23 EVELLE J. YOUNGER, Attorney General
24 N. GREGORY TAYLOR,
25 Assistant Attorney General
26 RUSSELL IUNGERICH
27 ROBERT G. COLLINS,
28 Deputy Attorneys General

29 DATED: _____

30 By: _____
31 ROBERT G. COLLINS

32 Attorneys for Defendant,
State of California, acting by
and through the State Lands Commission

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STIPULATION FOR REVESTMENT (continued)

DATED: _____

By:

JOSEPH D. PATELLO

Attorney for Defendant San Diego
Unified Port District

DATED: _____

By:

MICHAEL E. QUINTON

Attorney for Plaintiff,
United States of America

IT IS SO ORDERED.

DATED: _____

United States District Judge

EXHIBIT "D"

AGREEMENT OF LEASE

This Lease, made and entered into this _____ day of _____
1978, by and between the San Diego Unified Port District, of San Diego,
California, Lessor, and the United States of America, Lessee:

WITNESSETH:

1. The Lessor, in consideration of the payment as rent of One Dollar (\$1.00) by the Lessee, receipt of which is hereby acknowledged, and of the covenants and agreements herein contained, does hereby for itself, its successors and assigns, lease, demise and let unto the Lessee all those certain parts or portions of tidelands under the legal jurisdiction of the Lessor, more particularly bounded and described as follows:

Those portions of "E" and "F" Streets in the City of San Diego, County of San Diego, State of California lying between the Westerly limits of Pacific Highway and the Easterly limits of Harbor Drive as said streets were delineated and dedicated by Municipal Tide Lands Subdivision Tract No. 1 as Amended and Approved by the Port Director in 1936,

including all improvements thereon, if any, for a term of sixty-six (66) years commencing on the _____ day of _____ 1978 and expiring on the _____ day of _____ 2044, with a right of termination by the Lessee at any time by giving at least thirty (30) days notice in writing to the Lessor.

2. The Lessee hereby covenants and agrees to use the demised premises for Navy purposes only, and agrees further that this lease shall terminate at such time as the Department of the Navy shall determine that the demised premises are no longer required for Navy purposes.

3. The Lessee shall have the right during the existence of this lease to make alterations, attach fixtures and erect additions, structures or signs in or upon the premises hereby leased, which fixtures, additions

EXHIBIT "D"

or structures so placed in, upon or attached to the said premises shall be and remain the property of the Lessee and may be removed or otherwise disposed of by the Lessee.

4. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the rental price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, and who have not obtained such licenses for the sole purpose of effecting this lease, may be considered as bona fide employees or agencies within the exception contained in this clause.)

5. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this lease contract, or to any benefit that may arise therefrom; but this provision shall not be construed to this lease contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

SAN DIEGO UNIFIED PORT DISTRICT

UNITED STATES OF AMERICA

By _____

By _____