MINUTE ITEM
This Calendar Item No. C47
was approved as Minute Item
No. 47 by the State Lands
Commission by a vote of 3
to Ø at its 2-5-01
meeting

CALENDAR ITEM
C47

A 78

S 39

02/05/01
W 25113
D. Plummer
K. Olin
B. Stevenson
J. Rusconi

CONSIDER REQUEST FOR APPROVAL OF NAVAL TRAINING CENTER PROPERTY SETTLEMENT AND EXCHANGE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE STATE LANDS COMMISSION, AND FOR AUTHORIZATION TO ENTER AGREEMENT WITH THE SAN DIEGO UNIFIED PORT DISTRICT REGARDING THE PORT EXPANSION AREA

BACKGROUND

The purpose of this calendar item is to seek authorization by the State Lands Commission of an agreement to settle sovereign land title issues at the Naval Training Center ("NTC"), San Diego, San Diego County. Through the recordation of the deeds and patents called for in the agreement, the City of San Diego will own certain lands within the now closed NTC ("Trust Termination Parcels") free of State title and the public trust for commerce, navigation, and fisheries (the "public trust"). The City of San Diego will also own certain lands within the NTC and located adjacent to open water by grant from the State of California and subject to the public trust ("Public Trust Parcels"). In addition, a portion of the NTC will be held by the San Diego Unified Port District as granted lands subject to the public trust. Authorization is also sought to enable confirmation of these Port lands as sovereign lands. The Legislature enacted Chapter 714 of the Statutes of 2000 to facilitate the exchange.

The parties to the Agreement are the City of San Diego and the State of California, acting by and through the State Lands Commission. Exhibit A (attached to this calendar item and incorporated by reference) shows a general overview of the site within the City of San Diego. The area which is the subject of this agreement shall be called the "NTC Settlement Area," and is shown on Exhibit B attached to this calendar item. Another property, the "Port Expansion Area," is also shown on Exhibit B. Title to the Port Expansion Area will be confirmed in the San Diego Unified Port District, subject to the public trust. Exhibit B is made a part of this calendar item by reference.

In 1911, the state granted to the City of San Diego the tide and submerged lands within San Diego Bay, "situate on the city of San Diego side of said bay," lying between the

mean high tide line and the pierhead line, in trust for purposes of commerce, navigation, and fisheries and subject to the terms and conditions specified in that act. Section 3 of this 1911 grant prohibited the alienation of the granted lands. In 1913, by Chapter 250 of the Statutes of 1913, the Legislature authorized cities to convey tide and submerged lands to the United States "for public purposes." It is the position of the State Lands Commission that conveyance to the United States did not terminate the public trust.

Chapter 642, Statutes of 1929 was an amendment to the 1911 grant to the City of San Diego. By its terms, Chapter 642 declared that all areas shoreward of the bulkhead line, as then established, had ceased to be tidelands and were freed of all trusts and restrictions on those lands, except for the restriction against alienation. The meaning and legal impact of Chapter 642, Statutes of 1929 remain subjects of uncertainty and disagreement, in part due to the legal opinion in the case of Atwood v. Hammond (1935) 4 Cal. 2d 31. In addition, subsequent legislative enactments have treated land subject to Chapter 642, Statutes of 1929 as tide and submerged lands subject to the public trust. Also in 1929, the Legislature passed another act authorizing the grant of tide or submerged lands to the United States for public or governmental purposes, and confirmed all grants of tide and submerged lands that had previously been made.

Beginning in 1916, the city made several transfers of portions of the granted lands to the United States for purposes of constructing and operating what came to be known as the Naval Training Center, San Diego. The city in 1916 conveyed 56 acres of land to the United States lying waterward of the historic mean high tide line and extending to the bulkhead line. An additional 76 acres of tidelands lying waterward of the historic mean high tide line and extending to the bulkhead line were conveyed in 1919 to the United States. Then, in 1933, the city conveyed to the United States 95 acres lying waterward of the bulkhead line and extending to the pierhead line. Most of the transferred tide and submerged lands were subsequently filled and reclaimed by the Navy in furtherance of its plan for development of the NTC. The Navy filled an additional 135 acres of submerged lands lying waterward of the pierhead line in developing NTC San Diego. None of these activities terminated the public trust.

The Navy also acquired and developed substantial acreage for NTC San Diego that were historically uplands, never property of the State of California in its sovereign capacity, and thus not subject to the public trust.

In 1993, the Defense Base Closure and Realignment Commission recommended closure of the NTC San Diego under the Defense Base Closure and Realignment Act of 1990, and the Center was closed operationally in April 1997. As authorized by federal law, the Navy is in the process of transferring certain portions of the NTC Settlement Area under a no-cost economic development conveyance and two public benefit conveyances to the City, the local reuse authority for NTC San Diego. The Port

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Expansion Area has been or will be conveyed to the San Diego Unified Port District by a public benefit conveyance. All former and existing tide and submerged lands within the NTC Settlement Area for which the public trust has not been extinguished through the completion of the exchange will be subject to the public trust upon their release from federal ownership.
The existing configuration of trust and non-trust lands in the NTC Settlement Area is such that the purposes of the public trust cannot be fully realized, and is the subject of dispute between the City and the State. It is more difficult to achieve the purposes of the public trust because certain filled and reclaimed tidelands within the NTC Settlement Area have been cut off from access to navigable waters, and are no longer needed or required for the promotion of the public trust, or any of the purposes set forth in the city granting act. Other lands within the NTC Settlement Area directly adjacent to the waterfront or otherwise of high value to the public trust are currently either not public trust lands, or are in dispute as to their public trust status. Absent a trust exchange, substantial portions of the waterfront within the NTC Settlement Area would be subject to uncertainty regarding their public trust status and could be cut off from public access, while certain non-waterfront lands not useful for trust purposes would be restricted to trust-consistent uses.

The purpose of this calendar item is to seek authority to put the title questions to rest as authorized by Chapter 714, Statutes of 2000, through an agreement which has been developed between the staffs of the City of San Diego and the State Lands Commission. The draft agreement is on file at the Sacramento Office of the State Lands Commission, and will be referred to as the "Agreement." The Agreement has been developed in the context of particular problems stemming from closing military bases. Among these problems are complex federal land disposal procedures, the necessity of hazardous waste remediation on some minor areas of NTC, and delays in transfer out of the United States caused by the need to remediate. As provided in Chapter 714, no property will be confirmed as public trust lands until any necessary hazardous waste remediation has taken place. The result of the full implementation of the Agreement and its deeds and patents will be that the final configuration of public trust lands will be as shown in Exhibit C, attached to this calendar item and made a part of it by this reference. The final public trust configuration will allow the City to develop the uplands for various necessary non-trust purposes, while reserving areas adjacent to present open water for public trust uses, from potential waterfront heavy industrial use, to visitor-serving areas appropriate for shoreline parks, restaurants, shops, hotels, museums, public walkways, and sites for animal and bird habitat.

In addition, within the area to be confirmed as public trust lands is a recently-constructed child care center. Under Chapter 714, this center, a non-trust use, will be allowed to continue its operation during its useful life so as to enable the people of the state to benefit from the substantial investment made in the building without hindering the overall goal of preserving the public trust.

The most important terms of the Agreement will:

- Recognize that the United States has or will dispose of the NTC Settlement Area to the City of San Diego and the San Diego Unified Port District.

- The City will convey by grant deed to the State so much of the lands conveyed to it by the United States as lie within the Public Trust Parcels, making up the final trust configuration shown on Exhibit C.

- The State will patent to the City, free of the public trust, so much of such United States-to-City conveyance as lies within the Trust Termination Parcels.

- The State will patent to the City, subject to the public trust and Chapter 700, Statutes 1911, as amended, and the City will accept as such, so much of the United States-to-City conveyed lands as lie within the Public Trust Parcels.

- Recognize that portions of the Public Trust Parcels have hazardous waste in or on them, which will require assessment and remedial action prior to transfer to the State by the City. Any lands with hazardous waste will be transferred to the State by the City only after remediation has been completed.

- Authorize an escrow for the completion of the exchange of land identified in the Agreement.

The State Lands staff, with advice and assistance from the Office of the Attorney General, has evaluated the State's position as to land title within NTC. Also, the State Lands staff has reviewed and approved an appraisal of NTC, prepared according to instructions acceptable to staff. The conclusion is that the value of the economic interests being received by the State in the Public Trust Parcels is equal to or greater than the value which the State is relinquishing in the Trust Termination Parcels. Separate from economic value considerations, the Agreement will secure public trust title in land useful for a variety of public trust purposes, and the legislative trust grants to the City of San Diego and to the San Diego Unified Port District will assure that the State's property is put to public trust uses beneficial both locally and to all people of the State.

STATUTORY AND OTHER REFERENCES:

A. PRC: Div. 6, Parts 1 and 2; Div. 13
B. Cal. Adm. Code: Title 2, Div. 3; Title 14, Div. 6

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

   Authority: Public Resources Code 21080.11

EXHIBITS:

A. Location Map of the Naval Training Center, San Diego
B. Site Map of the Naval Training Center, Including the Port Expansion Area
C. Site Map of Final Public Trust Configuration

RECOMMENDED ACTION:

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, AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, THE SUBJECT TITLE SETTLEMENT AGREEMENT AND A PATENT OR PATENTS TO THE TRUST TERMINATION PARCELS IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE WITH THE OFFICE OF THE STATE LANDS COMMISSION; AND TO RECEIVE AND ACCEPT DEEDS TO THE PUBLIC TRUST PARCELS, ALL AS PROVIDED IN THE SETTLEMENT AGREEMENT AND ESCROW INSTRUCTIONS TO BE PREPARED PURSUANT TO IT.

3. FIND, UPON RECORDATION OF THE PATENTS FOR THE TRUST TERMINATION PARCELS, THAT:

   A. THE TRUST TERMINATION PARCELS HAVE BEEN IMPROVED, RECLAIMED, AND FILLED, HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS;

   B. THE SOVEREIGN INTERESTS WITHIN THE TRUST TERMINATION PARCELS ARE NOT NECESSARY OR USEFUL

FOR COMMERCE, NAVIGATION, OR FISHERIES, AND THAT THESE INTERESTS ARE BETTER SERVED BY THE ACQUISITION OF TITLE TO THE PUBLIC TRUST PARCELS.

C. THE SOVEREIGN INTERESTS WITHIN THE TRUST TERMINATION PARCELS COMPRISE ONLY A SMALL PART OF THE LAND LYING WITHIN THE HISTORIC SAN DIEGO BAY;

D. THE SETTLEMENT AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST;

E. THE ECONOMIC VALUE OF THE PUBLIC TRUST PARCELS ARE EQUAL TO OR GREATER THAN THE SOVEREIGN LAND TITLE WITHIN THE TRUST TERMINATION LANDS BEING RELINQUISHED;

F. THE CONFIGURATION OF THE LANDS ON THE NTC UPON COMPLETION OF THE EXCHANGE WILL NOT DIFFER SIGNIFICANTLY FROM THE CONFIGURATION SHOWN ON THE DIAGRAM IN SECTION 9 OF CHAPTER 714, STATUTES OF 2000, AND WILL INCLUDE ALL LANDS PRESENTLY SUBJECT TO TIDAL ACTION WITHIN THE NTC SETTLEMENT AREA.

G. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE NTC SETTLEMENT AREA. THE AGREEMENT IS A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED, AND IS IN LIEU OF THE COSTS, DELAY, AND UNCERTAINTIES OF TITLE LITIGATION, AND IS CONSISTENT WITH AND AUTHORIZED BY THE REQUIREMENTS OF LAW.

H. THE FINDINGS SET FORTH IN CHAPTER 714, STATUTES OF 2000, SECTION 5 (C)(1) THROUGH (C)(4) ~~ARE TRUE AND~~ ACCURATE.

4. THE AGREEMENT AUTHORIZED BY THE COMMISSION RECOGNIZES THAT THE STREETS AND OTHER TRANSPORTATION FACILITIES SHOWN ON VESTING TENTATIVE MAP NO. 99-1076 (OR A MAP WITH SUBSTANTIALLY SIMILAR STREETS AND TRANSPORTATION FACILITIES) AND LOCATED ON TRUST LANDS ACCORDING TO THE FINAL TRUST CONFIGURATION ARE DESIGNED TO BE COMPATIBLE WITH THE PUBLIC TRUST.

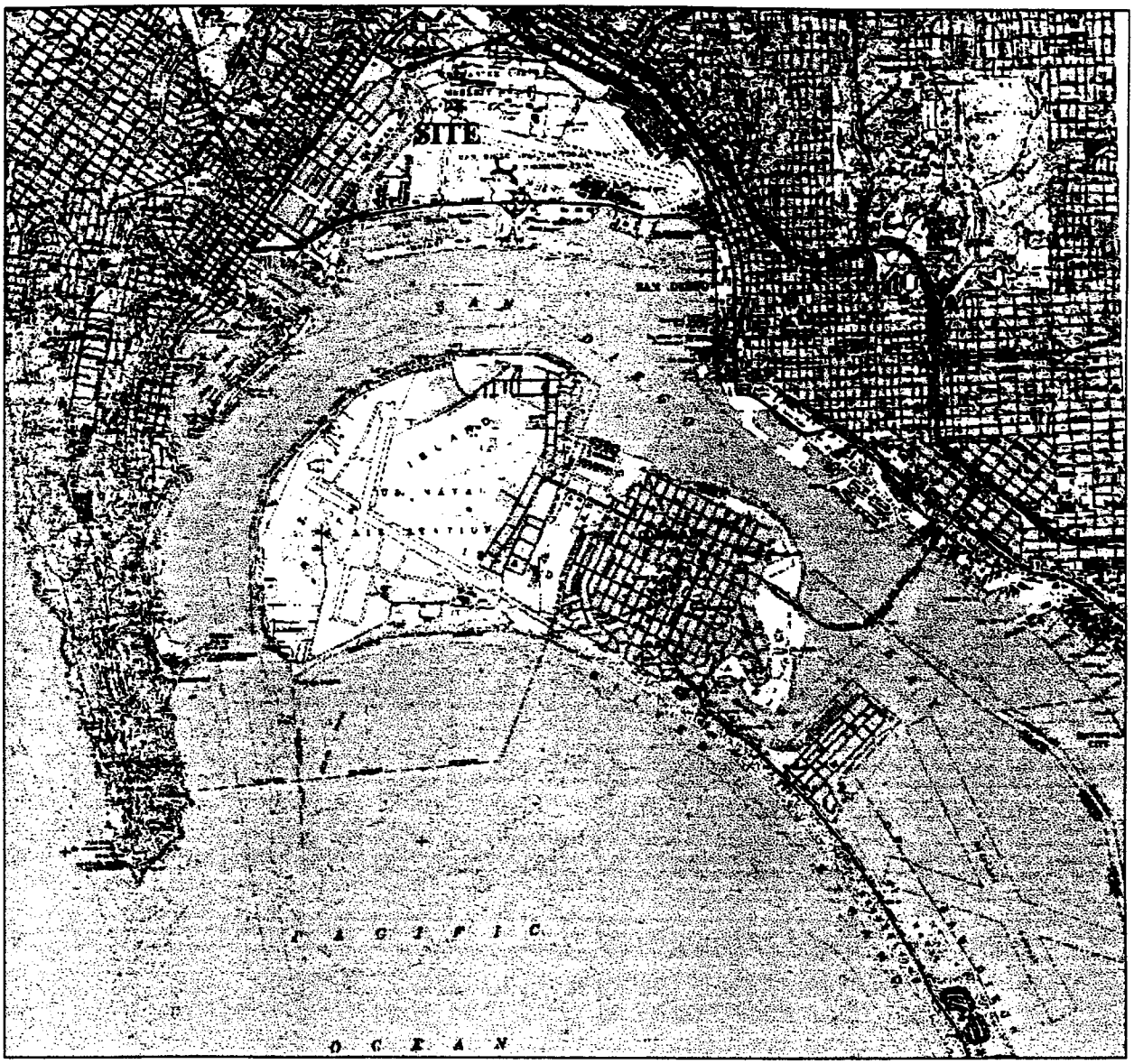
5. A SEPARATE CONFIRMATION OF PUBLIC TRUST TITLE IN THE PORT EXPANSION AREA THROUGH AGREEMENT BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE STATE LANDS COMMISSION IS HEREBY AUTHORIZED.

6. THE AGREEMENT AUTHORIZED BY THE COMMISSION PROVIDES THAT NO LANDS SHALL BE EXCHANGED INTO OR CONFIRMED AS PUBLIC TRUST LANDS UNTIL ANY NECESSARY HAZARDOUS MATERIALS REMEDIATION FOR THOSE LANDS HAS BEEN COMPLETED.

7. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE OFFICE OF THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE TITLE SETTLEMENT AGREEMENT AND FUTURE AGREEMENT WITH THE PORT; AND TO DETERMINE THE USEFUL LIFE OF THE CHILD CARE CENTER AS PROVIDED IN SECTION 6 (A)(1) OF CHAPTER 714, STATUTES OF 2000; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL OR ADMINISTRATIVE PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

NO SCALE

LOCATION MAP



This Exhibit is solely for purposes of generally defining the project area and is not intended to be, nor shall be construed as, a waiver or limitation of any state interest in the subject or any other property.

NO SCALE

EXHIBIT A

W25113

Naval Training Center San Diego

City of San Diego

San Diego Unified Port District

San Diego County, California

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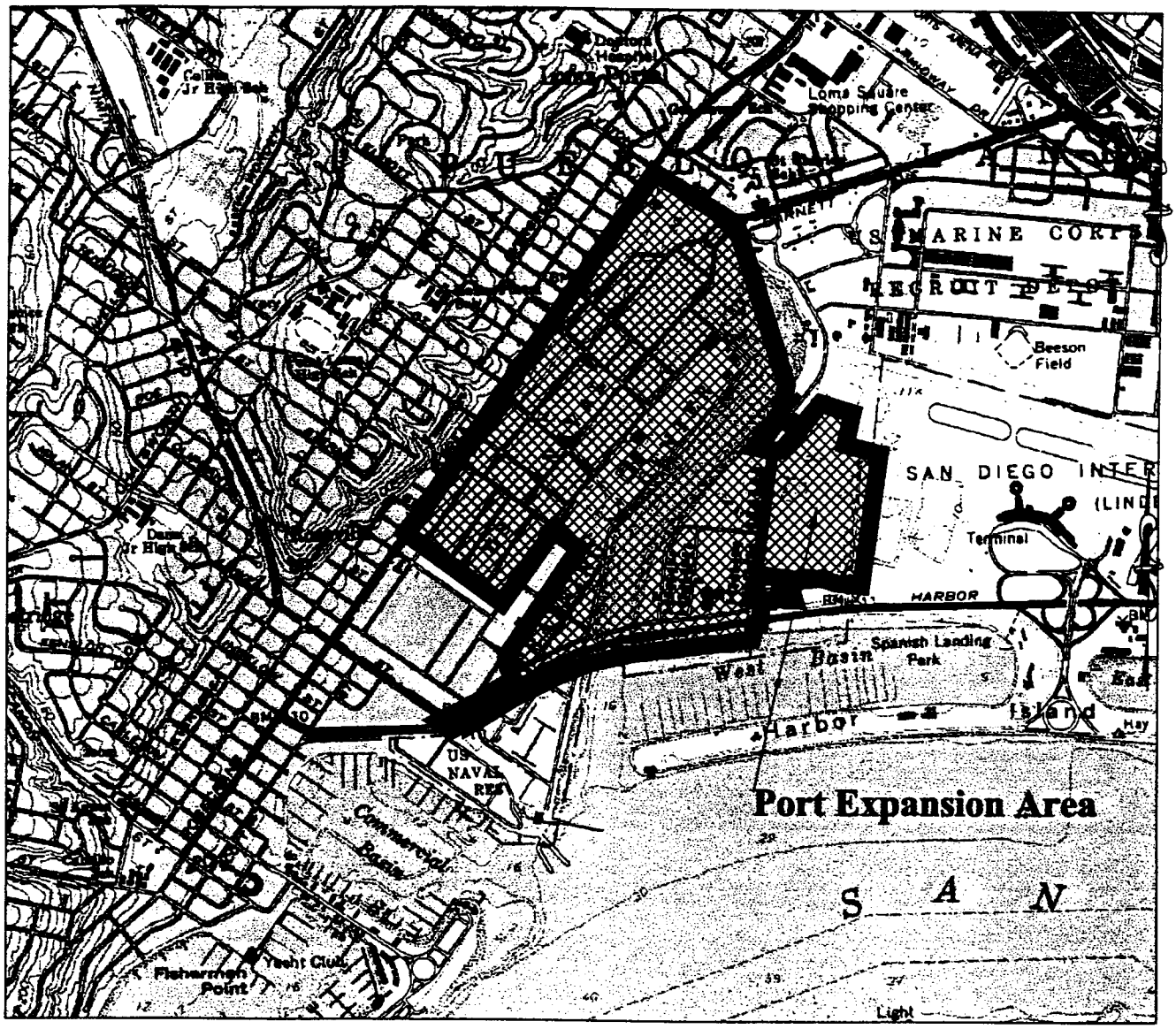
NO SCALE

SITE MAP



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NO SCALE

Naval Training Center, San Diego and Port Expansion Area

EXHIBIT B

W25113

Naval Training Center San Diego

City of San Diego

San Diego Unified Port District

San Diego County, California

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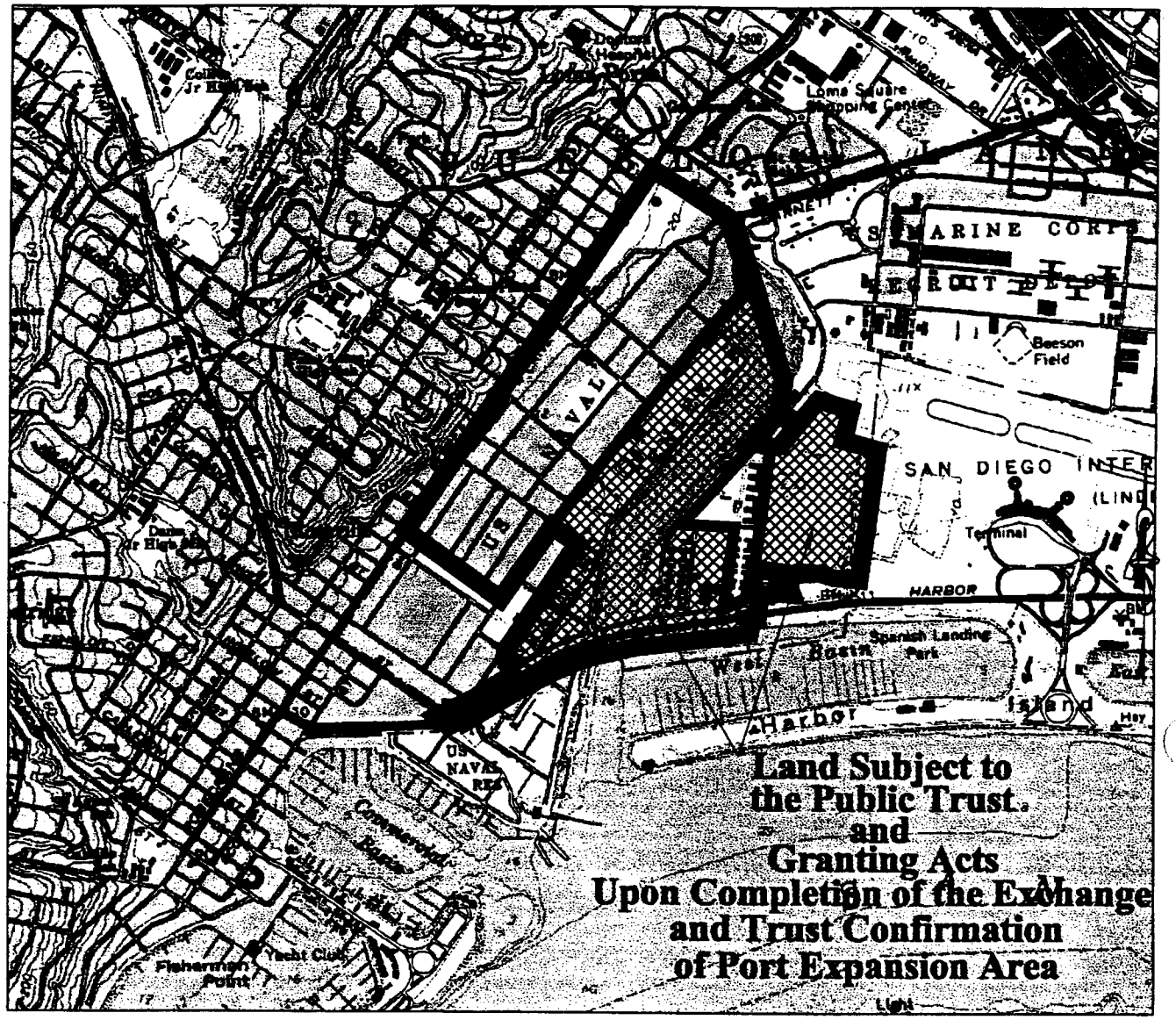
NO SCALE

SETTLEMENT PLAT



NO SCALE

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EXHIBIT C

W25113

Naval Training Center San Diego

City of San Diego

San Diego Unified Port District

San Diego County, California

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