MINUTE ITEM

This Calendar Item No. C32 was approved as Minute Item No. 32 by the California State Lands Commission by a vote of 3 to Ø at its 10- meeting.

CALENDAR ITEM
C32

A 14

S 5

AD 477

10/20/03
W 25674
D. Plummer
J. DeGraff
B. Stevenson
T. Mueller

REQUEST FOR APPROVAL OF FORD MOTOR PLANT SETTLEMENT AND EXCHANGE AGREEMENT AMONG THE CITY OF RICHMOND, THE RICHMOND REDEVELOPMENT AGENCY, AND THE CALIFORNIA STATE LANDS COMMISSION

The purpose of this calendar item is to seek State Lands Commission authorization to enter an agreement to settle sovereign land title issues involving the Ford Motor Plant and nearby properties in the city of Richmond, Contra Costa County. The settlement agreement (the "Agreement") is in the form of an exchange of lands, and includes deeds to implement the Agreement. The parties to the Agreement are the city of Richmond, acting as a trustee of tide and submerged lands granted to it by Chapter 317, Statutes of 1913, as amended (the "City"), the Richmond Redevelopment Agency, and the State of California, acting by and through the State Lands Commission. The property involved in the Agreement falls into several categories: The "Public Trust Parcels," the "Trust Termination Parcel," the "Public Trust Easement Parcel," and access rights where necessary to link these properties. Together, they comprise the "Subject Property." The location of the Subject Property is shown for reference on Exhibit A to this calendar item.

The settlement of title questions in and around the Ford Motor Plant was authorized by the Legislature through Chapter 527, Statutes of 2000. As the Legislature found, legal disputes regarding what lands remain subject to the public trust limit the potential development of the area, threaten the City's ability to preserve the historic Ford Motor Plant, and make uncertain the expansion of desirable public access and commercial recreation facilities along this portion of the Richmond waterfront. (Chapter 527, Statutes of 2000, § 2(a)(6)). In Chapter 527, these findings are made as to a larger area (the "Richmond Harbor Development Area"). The Subject Property lies within the larger area.

Chapter 527 also recognizes that the existing configuration of trust and non-trust lands in this area of the Richmond waterfront is such that the purposes of the public trust cannot be fully realized absent resolution of sovereign lands title questions. Some of the lands arguably subject to the Public Trust lie inland of the waterfront, while other lands along the water are either not Public Trust land or are subject to a title dispute. The purpose of Chapter 527 is to authorize settlements and exchanges to solve these problems and to create secure land titles in both inland areas and along the water. It is therefore in the public interest that this title dispute be resolved in a manner that furthers Public Trust purposes by the confirmation of trust title in waterfront parcels.

The Richmond Redevelopment Agency is rehabilitating and restoring the Ford Motor Plant, which is listed on the National Register of Historic Places, as a commercial, retail and/or industrial mixed-use project. The Agency has recently issued a Request for Proposals concerning the Plant, and is currently considering several responses from developers. The Ford Motor Plant is central to the completion of local plans to develop the Plant and surrounding property on and near the water. Consideration has been given in these plans to establishing a network of public shoreline access, parks, and possible restored ferry service. The San Francisco Bay Trail will link this area with other recreational amenities along San Francisco Bay.

BACKGROUND

Some title background is in order. In 1863, certain lands were surveyed and sold to a private party as part of Tideland Survey No. 8 (TLS 8), which comprises about three-fourths of the land underlying the Ford Motor Plant. This sale was made pursuant to State statutes. Later, the remainder of the land underlying what became the Ford Motor Plant was sold as Board of Tidelands Commissioners lots. It was ultimately the land within TLS 8 which gave rise to important title questions and the dispute which this settlement and exchange will resolve.

In 1913, the State granted to the City, in trust, the tidelands within the area of the Subject Property through Chapter 317, Statutes of 1913. This grant, as amended, remains effective today. Through the grant, the City holds and administers as a trustee any sovereign ownership and Public Trust easements in present and former tidelands.

The existence of title uncertainties within TLS 8 were identified early on by the City of Richmond. Research by Commission staff has shown that much of TLS 8 at the Ford Motor Plant included submerged lands not authorized for sale through tideland patent statutes. In 1916, the city of Richmond and the parties then holding record title to TLS 8 and nearby properties entered into an agreement to "remove obstacles that prevented implementation" of a program to develop the Richmond harbor pursuant to the 1913 grant from the State to the City. Chapter 527, Statutes of 2000, § 2(a)(3). Under the 1916 agreement, the private party claimants to TLS 8 conveyed to the city of Richmond certain tide and submerged lands that these parties claimed were in private ownership and that the City needed for its planned harbor development program. The properties received by the city of Richmond are within the current Port of Richmond.

Research by the staff of the Commission and the Office of the Attorney General has led to the following conclusions concerning title in the Ford Motor Plant:

1. The majority of the land within the Ford Motor Plant was, at the time of the survey and sale of TLS 8, submerged lands, not tidelands. This portion was not subject to sale by tidelands patent, and remains subject to a sovereign fee interest of the State and of the City as grantee in trust.

2. Portions of TLS 8 which were in fact tidelands within the Ford Motor Plant were validly sold, and are subject to a public trust easement of the State and City, administered by the City through its 1913 legislative grant. (People v. California Fish Company (1913) 166 Cal. 576).

3. Those portions of the Richmond Ford Motor Plant, which were sold by the Board of Tideland Commissioners and filled by 1980, are free of the Public Trust (City of Berkeley v. Alameda County Superior Court (1980) 26 Cal. 3d 515).

4. Efforts to settle title to the Ford Motor Plant in the 1916 agreement were not effective, and title remains uncertain to this day. This is for several reasons, among others: the legislative grant to the City of Richmond did not authorize settlements by exchange and the

termination of the Public Trust; the State, as a co-holder of public trust lands and of a reversionary interest, was not a party to the settlement; and the land title confirmed to the city of Richmond through the settlement was not conveyed to Richmond as tide and submerged lands.

The city of Richmond, as current record owner of the Ford Motor Plant through its Redevelopment Agency, argues that the Ford Motor Plant is not subject to the public trust, either in fee or through a public trust easement, for the following reasons, among others. These arguments are listed here without agreement by the State as to the arguments or the factual or legal premises underlying them:

1. The Ford Motor Plant was the subject of authorized and properly-conducted State sales of tide and submerged lands through the tidelands patent program and the Board of Tidelands Commissioners.

2. The 1916 settlement was a proper exercise of the City's Public Trust responsibility, and is binding upon the State. The settlement was entered as a part of a plan for harbor development. Following the settlement, the City constructed bulkheads, dredged channels, placed fill, and dedicated streets on those parcels conveyed to it pursuant to the 1916 agreement, all in promotion of a harbor. The Ford Motor Plant in which the Public Trust was terminated is a relatively small parcel and, under the plan, was not necessary for Public Trust purposes.

3. Subsequent to the 1916 settlement, the private parties to the settlement conveyed the Ford Motor Plant site to other private parties, including the Ford Motor Company, which constructed an automotive assembly plant on the parcel in 1931. Since 1916, the Ford Motor Company and other private and public owners have been in peaceable possession of the site, have improved it up to the time of the 1989 Loma Prieta earthquake, and have paid all taxes. The State is barred from asserting title at this late date.

Because of the conflicting positions of the State and the city of Richmond, there is legal uncertainty regarding the validity and geographic extent of fee title to portions of the Ford Motor Plant. There is also legal uncertainty regarding whether the Plant remains subject to a Public Trust easement and/or to a reversionary Public Trust interest in the State. Chapter 527, Statutes of 2000 specifically authorizes resolution of these title disputes between the City and the State through exchanges of and boundary adjustments to lands within TLS 8 and the larger Richmond Harbor Development Area. Chapter 527, Statutes of 2000, § 2(a)(7). All of the parcels within the Subject Property lie within this larger area.

The Legislature concluded that the proposed exchanges, agreements and boundary adjustments "will not interfere with, and will, in fact, be consistent with and further the purposes of, the public trust" if the State Lands Commission makes the findings set forth in section 2(a)(8) of the legislation, and as further set forth in this calendar item. The Legislature further declared its intention, subject to the specific terms of Chapter 527, "to authorize, ratify, and confirm any agreement by the [City] and the [Commission] with any public or private entity, to enter into an exchange or exchanges of tide or submerged lands, or settlement regarding conflicting claims of ownership, and by that agreement or settlement terminate the public trust over filled tidelands consistent with" the statute. *Id.*, § 2(b).

The purpose of this Calendar Item is to obtain Commission authority to settle certain title disputes between the City and the State, through an agreement that has been developed by the staffs of the City, the Richmond Redevelopment Agency, and the Commission. The Agreement is on file in the Commission's Sacramento office. Full implementation of the Agreement and recordation of its accompanying deeds will result in final configuration of Public Trust lands as shown in Exhibit A.

The final public trust configuration will allow the Richmond Redevelopment Agency to redevelop the portion of the Ford Motor Plant away from the water for various non-trust purposes under pending proposals. The section of the Ford Motor Plant on or over water, known as the "Craneway" and marked Parcel F-2, will be subject to a Public Trust easement as required by Chapter 527. In the Craneway, the City will exercise the Public Trust easement for purposes of public access to and use and enjoyment of water-related activities and uses incidental to such activities. Such uses include overnight accommodation, restaurants and

cafes, water-related industry, museums regarding waterfront history, visitor-serving retail, boating and ferry service. The City may, with the Commission's approval, amend the exercise of the public trust easement to allow other uses consistent with the public trust.

Through the Agreement and its associated deeds, other lands will also be confirmed as owned in fee and held by the City through its legislative trust grant. These parcels are either on or adjacent to the open water of the Bay, and will serve as shoreline parks, a possible site for ferry service, public walkways, open space, and animal and bird habitat (Parcels B, D-1 and D-2, E-1 through E-4, and F-3 though F-5). These are the "Public Trust Parcels." Also, the City will deed access rights to the Public Trust to make certain that there is continuous public access to and along the shoreline.

For instance, an access connection must be established from E-1 and F-5 through the Ford Motor Plant to F-2. Another example is Parcel C, which links Parcel B and the waterfront to a public road. Parcel C may, at the option of the State, be received in fee as a public trust parcel in fee, or as in the form of an access easement held as an asset of the public trust.

The staff, with advice and assistance from the Office of the Attorney General, has evaluated the State's position as to land title within the settlement area. Also, the staff has reviewed and approved an appraisal of all the parcels in question, prepared according to instructions acceptable to staff. Staff has also reviewed and approved a Phase I and Phase II environmental site assessment for Parcel B, which concluded that the site contained no hazardous substances above regulatory limits. Staff's conclusion is that the value of the Public Trust economic interests being received by the State in the Public Trust Parcels is equal to or greater than the value that the State is relinquishing in the Trust Termination Parcel. Separate from economic value considerations, the settlement agreement will secure Public Trust title in land useful for a variety of public trust purposes beneficial both locally and to all people of the State. Also, the Ford Motor Plant shown for reference as F-1 is a relatively small part of the tidelands granted to the city of Richmond.

STATUTORY AND OTHER REFERENCES:

A. PRC: Div. 6, Parts 1 and 2; Div. 13

B. Cal. Code Regs.: Title 2, Div. 3; Title 14, Div. 6

PERMIT STEAMLINING ACT:

N/A

OTHER PERTINENT INFORMATION:

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

EXHIBIT:

A. Location map of the Subject Property showing parcels subject to the Agreement

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 CONTRA COSTA COUNTY, THE SUBJECT TITLE SETTLEMENT AND EXCHANGE AGREEMENT AND ITS ASSOCIATED DEEDS AND PATENTS IN FORMS SUBSTANTIALLY SIMILAR TO THOSE NOW ON FILE WITH THE COMMISSION; AND TO RECEIVE AND ACCEPT DEEDS TO THE PUBLIC TRUST PARCELS, THE CRANEWAY PARCEL, AND ACCESS EASEMENTS, ALL AS PROVIDED FOR IN THE SETTLEMENT AGREEMENT AND THE ESCROW INSTRUCTIONS TO BE PREPARED PURSUANT TO IT.

3. FIND, EFFECTIVE UPON RECORDATION OF THE TITLE SETTLEMENT AND EXCHANGE AGREEMENT, THAT:

   A. THE TRUST TERMINATION PARCEL HAS BEEN FILLED AND RECLAIMED; CONSISTS ENTIRELY OF DRY, NON-WATERFRONT LAND LYING ABOVE THE PRESENT MEAN HIGH TIDE LINE; HAS BEEN CUT OFF FROM DIRECT ACCESS TO THE WATERS OF SAN FRANCISCO BAY BY PAST FILLING OF INTERVENING PROPERTY; AND IS NO LONGER TIDELANDS OR SUBMERGED LANDS;

   B. THE TRUST TERMINATION PARCEL IS NOT NECESSARY IN ITS CURRENT PUBLIC TRUST ENCUMBERED STATUS FOR THE HIGHLY BENEFICIAL PROGRAM FOR WATERFRONT DEVELOPMENT IN THE CITY (AS REPRESENTED BY THE PLANS FOR THE RICHMOND HARBOR DEVELOPMENT AREA AS THAT AREA IS DESCRIBED IN CHAPTER 527, STATUTES OF 2000, AND FOR RELATED AND SUPPORTING FACILITIES OUTSIDE THE RICHMOND HARBOR DEVELOPMENT AREA), DUE TO THE CURRENT STATE OF THE LAND;

   C. THE SOVEREIGN INTERESTS WITHIN THE TRUST TERMINATION PARCEL ARE NOT NECESSARY OR USEFUL FOR COMMERCE, NAVIGATION, OR FISHERIES, OR FOR THE PURPOSES OF CHAPTER 317, STATUTES OF 1913, AS AMENDED; THESE INTERESTS ARE BETTER SERVED BY THE ACQUISITION OF TITLE TO THE PUBLIC TRUST PARCELS; AND THE TRUST TERMINATION PARCEL IS NO LONGER NEEDED OR REQUIRED FOR THE PROMOTION OF THE PUBLIC TRUST OR THE RICHMOND GRANTED LANDS TRUST.

   D. THE SOVEREIGN INTERESTS WITHIN THE TRUST TERMINATION PARCEL CONSTITUTE A RELATIVELY SMALL PORTION OF ALL TIDELANDS GRANTED TO THE CITY;

E. THE PUBLIC TRUST LANDS WILL SERVE PUBLIC TRUST NEEDS FOR PUBLIC ACCESS, PARKS, VISITOR SERVICE, AND A POSSIBLE FERRY LANDING;

F. STREETS IN OR SERVING THE RICHMOND HARBOR DEVELOPMENT AREA AND OTHER PROPERTY WITHIN TLS 8 HAVE PROVIDED, AND WILL CONTINUE TO PROVIDE, PUBLIC ACCESS TO THE WATER;

G. THE SETTLEMENT AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND COMMERCE; FOR THE ENHANCEMENT OF PUBLIC ACCESS TO AND ALONG THE SHORELINE AND WATERFRONT; AND FOR THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF PUBLIC TRUST INTERESTS IN THE REMAINING TIDELANDS AND SUBMERGED LANDS;

H. THE ECONOMIC VALUE OF THE PUBLIC TRUST PARCELS, THE PUBLIC TRUST EASEMENT IN THE CRANEWAY PARCEL, AND THE PUBLIC ACCESS EASEMENTS, EXCEEDS THE COMBINED ECONOMIC VALUE OF PUBLIC TRUST RIGHTS IN THE TRUST TERMINATION PARCEL AND THE FEE UNDERLYING THE CRANEWAY PARCEL IN WHICH THE PUBLIC TRUST IS TO BE TERMINATED BY THE AGREEMENT AND ASSOCIATED PATENTS;

I. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SUBJECT PROPERTY. 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.

4. AUTHORIZE AND DIRECT THE STAFF OF THE COMMISSION AND/OR THE OFFICE OF THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE TITLE SETTLEMENT AND EXCHANGE AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL OR ADMINISTRATIVE PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

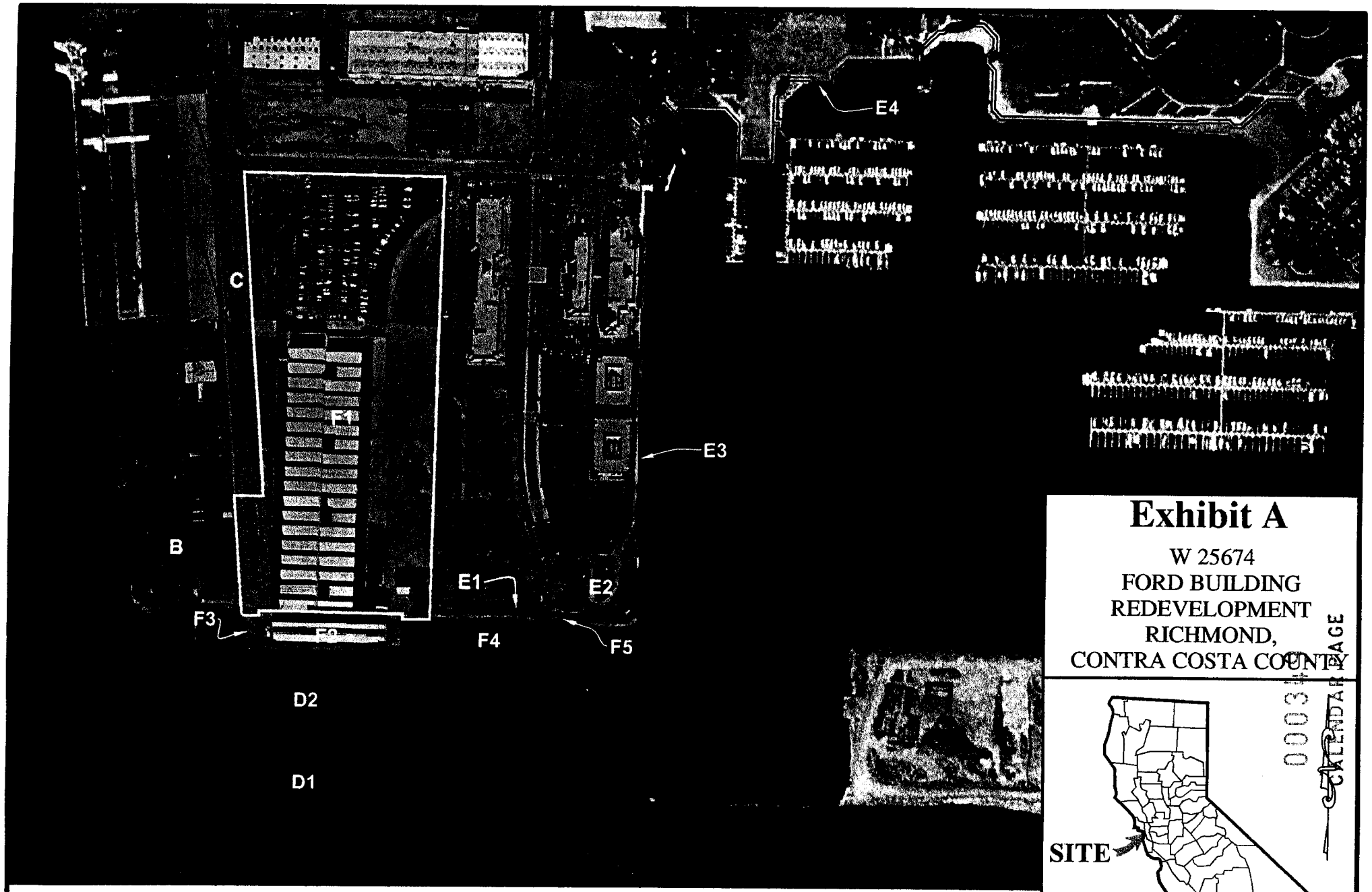
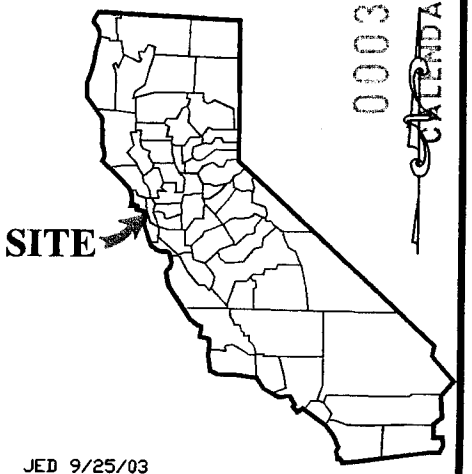


Exhibit A

W 25674
FORD BUILDING
REDEVELOPMENT
RICHMOND,
CONTRA COSTA COUNTY



CALENDAR PAGE 00034

IMAGE SOURCE: USGS DOQQ RIO VISTA

SCALE 1" = 450'

This Exhibit is for the general purpose of depicting the location of the settlement area, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

TRUST TERMINATION PARCELS
PUBLIC TRUST PARCELS
ACCESS PARCEL
EASEMENT NO. 98-328212

JED 9/25/03