

MINUTE ITEM

This Calendar Item No. 130 was approved as Minute Item No. 130 by the California State Lands Commission by a vote of 3 to 0 at its 12/16/98 meeting.

CALENDAR ITEM

130

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AD 228 12/16/98
W 23944
D. Plummer
B. Stevenson
D. Eagan
K. Olin

REQUEST FOR APPROVAL OF AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION, THE CITY AND COUNTY OF SAN FRANCISCO, AND THE CATELLUS DEVELOPMENT CORPORATION REGARDING TRANSFER OF LAND TO THE UNIVERSITY OF CALIFORNIA AT SAN FRANCISCO, AND ALSO REGARDING AN EXCHANGE OF LANDS; CITY AND COUNTY OF SAN FRANCISCO

APPLICANTS:

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BACKGROUND

The purpose of this calendar item is to seek authorization by the State Lands Commission for the State to enter the "Amended and Restated Agreement Concerning the Public Trust," a three-party agreement concerning land ownership within two areas south of Market Street in the City and County of San Francisco. These areas shall be

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referred to in this item as the "Mission Bay Development Area" and the "Western Pacific Property." These two areas are shown for reference purposes in Exhibits A and B, which are attached to this calendar item and incorporated by reference as parts of it. The parties to the Agreement Concerning the Public Trust are Catellus Development Corporation, a Delaware Corporation ("Catellus"), the City and County of San Francisco, acting as a charter city and county, and also acting by and through the San Francisco Port Commission (the "City and County"), and the State of California, acting by and through the State Lands Commission (the "State"). The Amended and Restated Agreement Concerning the Public Trust will be referred to in this calendar item as the "Agreement Concerning the Public Trust."

The Agreement Concerning the Public Trust will put to rest long-standing disputes concerning title to land in both the Mission Bay Development Area and the Western Pacific Property. When implemented, it will reorganize fragmented patterns of public and private land ownership established by subdivisions and other actions more than a century ago. The reconfigured public land holdings will be useful to the City and County and the State for public parks and open space areas, for streets providing access to the waterfront, and for the creation of an expansion campus of the University of California. The redevelopment of the Mission Bay Development Area will have many other benefits, including construction of approximately 6,090 new market rate and affordable housing units, the creation of thousands of jobs, employment opportunities for disadvantaged individuals, and the construction of an entire public infrastructure system.

At its June 19, 1998, meeting, the State Lands Commission authorized entry into an agreement which provided the land necessary for part of the first phase of the expansion campus of the University of California at San Francisco. This agreement was known, and shall be referred to in this calendar item, as the "Block 24 Agreement." Through the Block 24 Agreement, the State sold its title interests in streets laid out on now-filled tidelands within the Block 24 portion of the campus site, and in certain other adjacent lands, as part of an overall agreement to create a unified parcel for transfer of land by the City and County and Catellus to the Regents of the University of California (the "Regents"), at no cost to the Regents. The Block 24 Agreement was recorded, and the Regents received title to the land, on November 6, 1998. The location of Block 24 is shown on Exhibit A, as is the relationship between Block 24 and the remainder of the first phase of development of the expansion campus.

The settlement and reconfiguration of sovereign land titles within the Mission Bay

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Development Area and the Western Pacific Property have been the subject of several acts of the Legislature. These acts are found at Chapter 1143, Statutes of 1991, as amended by Chapter 86, Statutes of 1992, and as further amended by Chapter 203, Statutes of 1997. Together, these statutes are referred to in the Agreement Concerning the Public Trust and in this calendar item as "the Act." The Act requires State Lands Commission approval of any proposed agreement for the sale of streets to acquire land for the expansion campus and for the exchange of sovereign lands as part of a settlement of title questions within the Mission Bay Development Area and the Western Pacific Property.

The State has several types of title interests within the Mission Bay Development Area. The present location of these interests (both disputed and undisputed) is shown on Exhibit C, attached to this calendar item and incorporated by this reference as a part of it. As recognized in the Act, certain of the lands within Mission Bay are tide and submerged lands granted in trust by the Legislature to the City through Chapter 1333, Statutes of 1968, as amended (known as the "Burton Act"). Some of these granted lands lie within the Port area and are administered by the Port Commission; others lie outside the Port area, and are administered by the City and County, separate from the Port Commission. The lands within the Mission Bay Development Area consist of lots, blocks, and streets laid out in state tidelands pursuant to various statutes enacted in the years following statehood. The lots and blocks were conveyed to private parties, filled, and are now almost entirely held by Catellus. Certain of the streets and strips of land were later granted in trust to the City and County by the Legislature through the Burton Act. Many of these streets are "paper" streets owned by the State and City and County as public trust lands, and are neither used for nor useful as public streets. As the Legislature has found in the Act, the pattern of streets does not conform to any plan for the future development of the area, nor do the streets serve any purpose for the public trust, nor are they susceptible to public trust uses. It is these streets which are in dispute among Catellus, the City and County, and the State. Court judgments have been rendered concerning some of the streets granted in fee to the City and County, and the parties to the Agreement Concerning the Public Trust dispute the effect of these judgments.

In the Western Pacific Property, there are also several types of land title. The majority of today's dry land within the Western Pacific Property was the subject of a legislative sale of state tidelands to the Golden City Homestead Association, as authorized by Chapter 407, Statutes of 1864. The State maintains that title to tidelands transferred to the Association remains subject to a public trust easement (see People v. California

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Fish Company (1913) 166 Cal. 576). Other portions of the Western Pacific Parcel were tide and submerged lands lotted and sold in the last century, similar to such lands within the Mission Bay Development Area. The majority of the area within these lots was subject to tidal action in 1980, and is still within San Francisco Bay today. The portions of the lots which were unfilled in 1980 are subject to a public trust easement held by the City and County pursuant to the Burton Act (City of Berkeley v. Superior Court (1980) 26 Cal. 3d 515). The streets bounding the lots are owned in fee by the City and County subject to the Burton Act. As within the Mission Bay Development Area, the existence and character of State sovereign title are disputed by Catellus and, as to the Western Pacific Transfer Parcel and a portion of the Western Pacific Shoreline Parcel, also by the City and County.

The land ownership disputes, coupled with fragmented public and private ownerships, limit potential development of public and private land within both the Mission Bay Development Area and the Western Pacific Property. The Act rectifies this situation by authorizing two actions: first, with the approvals of the City and County and the State Lands Commission, a sale of reserved streets as permitted in Article X, Section 3 of the California Constitution, the consideration for which is the conveyance to the Regents by the City and County and Catellus of the land necessary for the expansion campus within the Mission Bay Development Area; second, also with the approvals of the City and County and the State Lands Commission, an exchange of Burton Act lands and the State's title in contested streets within the Mission Bay Development Area and the Western Pacific Parcel. Through the exchange, the State and the City and County will obtain secure title to lands within both areas in a consolidated pattern that is useable for the public trust purposes enumerated in the Act. Within the Mission Bay Development Area, the pattern of ownership of the land to be subject to the public trust is substantially in the configuration of the diagram which is made a part of Section 13.6 of the Act, and is more specifically represented in Exhibit D. The City and County, including its Port, approved the Agreement Concerning the Public Trust in October 1998.

The staff of the State Lands Commission and the Office of the Attorney General have researched the location and nature of state and private title interests within both the Mission Bay Development Area and the Western Pacific Property. Commission staff and the Office of the Attorney General have worked with Catellus and the City and County to draft the Agreement Concerning the Public Trust. In general terms, the Agreement provides the following:

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1. Within the Mission Bay Development Area, the State will receive uncontested sovereign public trust ownership in the final configuration of public trust ownership as shown in Exhibit D, attached to this calendar item and incorporated by reference as a part of it. Two exceptions apply. As to one small area, Catellus and the City and County agree to deed title to the State following later acquisition of the property. As to certain easement parcels, the State will receive a public trust easement which will become fee ownership when the City and County completes street vacation proceedings.
2. Within the Mission Bay Development Area, public trust title confirmed in or obtained through exchange by the State will be conveyed by the State to the City and County, to be held in trust for the purposes of the Act. Property within the Port area will be administered by the Port, subject to the terms, conditions, and reservations of the Burton Act; sovereign land inland of the Port area will be administered by the City.
3. Within the expansion campus, the Regents will be deeded (at no cost to the Regents) title to the land within Phase 1, other than Block 24, which has already been conveyed to the Regents. To provide some flexibility for the planning objectives of the University, the Agreement Concerning the Public Trust permits some alteration in the dividing line between Phase 1 and Phase 2 areas of the expansion campus, so long as minimum acreage requirements for land coming to the State are met. Acquisition of land for Phase 2 of the campus will occur through a binding "Donation Agreement," previously entered into between the City and County and the Regents and a binding "Contribution Agreement," previously entered into between Catellus and the Regents. The State Lands Commission is not a party to those agreements, although conveyance of Phase 1 of the campus by Catellus and the City and County is a condition precedent to the closing of the exchanges and sales in the Agreement Concerning the Public Trust.
4. Regarding the campus, the Contribution Agreement and the Donation Agreement include terms stating that the land conveyed to the Regents shall revert, in whole or in part, to the City and County and/or Catellus if the Regents do not fulfill certain terms. The Agreement Concerning the Public Trust provides that, if a reversion does occur in whole or in part, public trust interests in portions of parcels referred to in the Agreement as the Street Reimposition Area and the Campus Reimposition Area equivalent in acreage

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to the reverted acreage will be transferred to the State. The State will, in turn, transfer the interests in former Burton Act properties to the City and County, to be held in trust under the Burton Act and for the uses set forth in the Act.

5. Within the Mission Bay Development Area, provides that the State and the City and County will relinquish to Catellus sovereign title in certain areas to which either or both assert title, other than in the land in Exhibit D, which will be held by the City and County in trust for the purposes set forth in the Act. As provided in the Act, the State will reserve minerals in lands in which it had previously reserved them.
6. Within the Western Pacific Property, establishes three areas shown on Exhibit B: first, the Western Pacific Easement Parcels within San Francisco Bay, in which a public trust easement in favor of the State will be recognized by Catellus; second, the Western Pacific Shoreline Parcel, which will be deeded to the State as sovereign land, and which the State will transfer to the City and County, acting through its Port Commission, subject to the terms of the Burton Act, and for the purposes set forth in the Act; and third, the Western Pacific Transfer Parcel, in which the State will terminate any sovereign title which may now exist.

The staff has reviewed appraisals for both the Mission Bay Development Area and the Western Pacific Property. The staff has concluded that the economic value of land to be received by the Regents equals or exceeds the value of the State's interests in streets to be sold. Similarly, the economic value of land received by the State through exchange within the remainder of the Mission Bay Development Area equals or exceeds the value of the land or interests in land to be relinquished by the State. The same holds true for the Western Pacific Parcel, where the value of land to be received by the State in the Western Pacific Shoreline Parcel equals or exceeds the value of the asserted interests of the State in the Western Pacific Transfer Parcel.

Separate from economic values, the Agreement Concerning the Public Trust furthers the objectives of the Act by acquiring land for the University expansion campus at no cost to the Regents and by consolidating disputed and undisputed sovereign land title in both the Mission Bay Development Area and the Western Pacific Property in a manner useful for the public trust uses set forth in the Act.

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STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.
- B. California Code of Regulations: Title 2, Div.3; Title 14, Div. 6.
- C. Chapter 1143, Statutes of 1991, as amended by Chapter 86, Statutes of 1992, and as further amended by Chapter 203, Statutes of 1997.

PERMIT STREAMLINING ACT DEADLINE:

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 the actions before the State Lands Commission are exempt from the requirements of the CEQA as a statutorily exempt project. The actions are exempt because they involve settlements of title and boundary problems.

Authority: Public Resources Code section 21080.11 and Title 24 California Code of Regulations section 15282 (g).

EXHIBITS:

- A. Site Map of the Mission Bay Development Area, Including the University Expansion Campus, Its First Phase, and Block 24.
- B. Site Map of the Western Pacific Property.
- C. Site Map of Existing and Asserted Sovereign Title Interests.
- D. Site Map of Sovereign Title Interests Following Recording of the Agreement Concerning the Public Trust and its Patents and Deeds.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

- 1. FIND THAT THE ACTIONS BEFORE THE STATE LANDS COMMISSION ARE 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 SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

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2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE PROPOSED AGREEMENT CONCERNING THE PUBLIC TRUST AND ITS PATENTS IN FORMS SUBSTANTIALLY SIMILAR TO THOSE NOW ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION, INCLUDING FINDINGS TO TAKE EFFECT UPON RECORDING OF THE AGREEMENT AND PATENTS, WHICH WILL RESULT IN A TERMINATION OF SOVEREIGN RIGHTS IN A MANNER CONSISTENT WITH THE AGREEMENT CONCERNING THE PUBLIC TRUST AND THE ACT.

3. FIND, EFFECTIVE UPON RECORDATION OF THE AGREEMENT CONCERNING THE PUBLIC TRUST, THAT:
 - A. THE TIDELANDS WITHIN THE MISSION BAY DEVELOPMENT AREA (OTHER THAN THE LANDS WITHIN EXHIBIT D) AND THE TIDE AND SUBMERGED LANDS WITHIN THE WESTERN PACIFIC TRANSFER PARCEL HAVE BEEN FILLED AND RECLAIMED AND CONSIST ENTIRELY OF DRY LAND LYING ABOVE THE PRESENT LINE OF MEAN HIGH TIDE, ARE CUT OFF FROM ACCESS TO THE WATERS OF SAN FRANCISCO BAY, AND ARE NO LONGER NEEDED OR REQUIRED FOR THE PROMOTION OF THE PUBLIC TRUST OR THE BURTON ACT TRUST.

 - B. NO SUBSTANTIAL INTERFERENCE WITH THE PUBLIC TRUST OR THE BURTON ACT TRUST USES AND PURPOSES WILL ENSUE BY VIRTUE OF THE SALE OF STREETS OR THE TERMINATION OF THE PUBLIC TRUST AS SET FORTH IN THE AGREEMENT CONCERNING THE PUBLIC TRUST, THE SALE OF STREETS AND THE TERMINATION OF THE PUBLIC TRUST ARE CONSISTENT WITH THE FINDINGS AND DECLARATIONS IN SECTION 2 OF THE ACT, AND THE SALE AND TERMINATION ARE IN THE BEST INTERESTS OF THE STATE AND THE CITY AND COUNTY.

 - C. THE CONSIDERATION FOR THE SALE OF LANDS OR INTERESTS IN LANDS IN STREETS PURSUANT TO SECTION 3 OF ARTICLE X OF THE CALIFORNIA CONSTITUTION IS THE CONVEYANCE TO THE REGENTS OF LAND FOR THE EXPANSION OF ITS SAN FRANCISCO CAMPUS, THE VALUE OF WHICH EQUALS OR EXCEEDS THE VALUE OF THE LANDS OR INTERESTS IN LANDS THAT ARE TO BE SOLD PURSUANT TO SECTION 3 OF ARTICLE X OF THE CALIFORNIA CONSTITUTION.

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- D. THE CONSIDERATION FOR THE TERMINATION OF PUBLIC TRUST TITLE BY EXCHANGE WITHIN THE MISSION BAY DEVELOPMENT AREA IS THE RECEIPT BY THE STATE OF LAND OR INTERESTS IN LAND (OTHER THAN THE EXPANSION CAMPUS), THE VALUE OF WHICH EQUALS OR EXCEEDS THE VALUE OF THE LAND OR INTERESTS IN LAND TO BE RELINQUISHED BY THE STATE.
- E. THE CONSIDERATION FOR THE TERMINATION OF THE PUBLIC TRUST WITHIN THE WESTERN PACIFIC TRANSFER PARCEL IS THE RECEIPT BY THE STATE OF LANDS WITHIN THE WESTERN PACIFIC SHORELINE PARCEL, THE VALUE OF WHICH EQUALS OR EXCEEDS THE VALUE OF THE LAND OR INTERESTS IN LAND TO BE RELINQUISHED BY THE STATE.
- F. UPON COMPLETION OF THE SALES AND EXCHANGES CONTEMPLATED BY THE AGREEMENT CONCERNING THE PUBLIC TRUST, THE LANDS SUBJECT TO THE PUBLIC TRUST OR THE BURTON ACT TRUST, OR BOTH TRUSTS, WITHIN THE MISSION BAY DEVELOPMENT AREA SHALL BE SUBSTANTIALLY IN THE CONFIGURATION SHOWN ON THE DIAGRAM IN SECTION 13.6 OF THE ACT, AND THEREFORE ARE IN CONFORMITY WITH THE ACT.
- G. UPON COMPLETION OF THE EXCHANGES CONTEMPLATED BY THE AGREEMENT CONCERNING THE PUBLIC TRUST, THE LANDS SUBJECT TO THE PUBLIC TRUST OR THE BURTON ACT TRUST, OR BOTH TRUSTS, WITHIN THE WESTERN PACIFIC PROPERTY SHALL BE SUBSTANTIALLY AS REQUIRED BY SECTION 2 (H) (7) (B) OF THE ACT, AND THEREFORE ARE IN CONFORMITY WITH THE ACT.
4. APPROVE THE AGREEMENT CONCERNING THE PUBLIC TRUST, ITS DEEDS, AND ITS PATENTS, AND ALL ACTIONS WHICH ARE APPROVED BY THE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL IN CONNECTION THEREWITH AND IN FURTHERANCE THEREOF.
5. APPROVE RECORDATION ON BEHALF OF THE COMMISSION OF THE AGREEMENT CONCERNING THE PUBLIC TRUST AND THE PATENTS REFERRED TO WITHIN IT, IN SUBSTANTIALLY THE FORM OF THE COPIES OF THOSE DOCUMENTS NOW ON FILE IN THE OFFICES OF THE STATE LANDS

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COMMISSION, PROVIDED THAT THOSE DOCUMENTS ARE RECORDED PURSUANT TO THE TERMS OF THE AGREEMENT CONCERNING THE PUBLIC TRUST AND ESCROW INSTRUCTIONS AND ANY OTHER CLOSING DOCUMENTS APPROVED BY COMMISSION STAFF AND THE OFFICE OF THE ATTORNEY GENERAL.

6. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR 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 AGREEMENT, INCLUDING THE FILING OF A NOTICE OF EXEMPTION PURSUANT TO TITLE 14 CALIFORNIA CODE OF REGULATIONS SECTION 15062; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

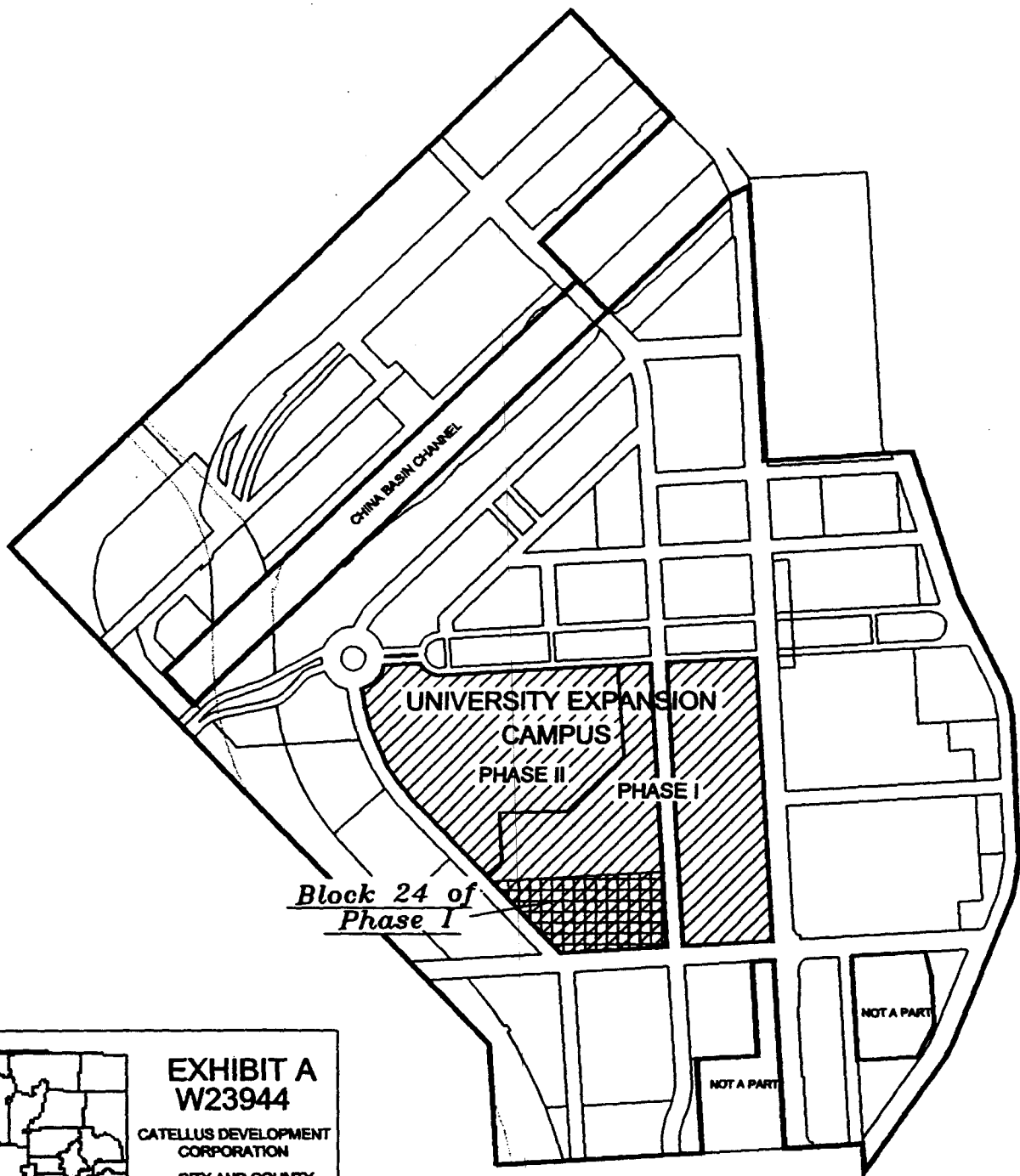
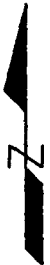
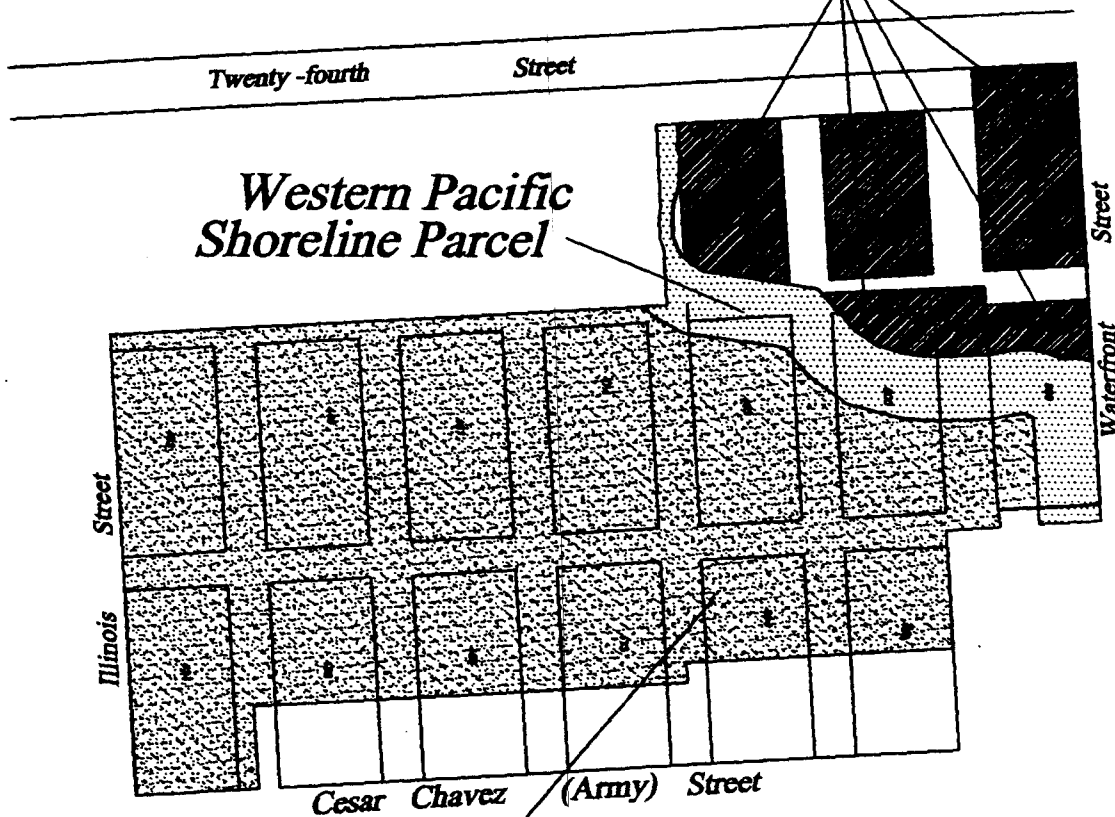


EXHIBIT A
W23944
 CATELLUS DEVELOPMENT CORPORATION
 CITY AND COUNTY OF SAN FRANCISCO
 SAN FRANCISCO CALIFORNIA

MISSION BAY DEVELOPMENT AREA

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*Western Pacific
Easement
Parcels*



*Western Pacific
Transfer Parcel*

EXHIBIT B
W23944
CATELLUS DEVELOPMENT CORPORATION
CITY AND COUNTY OF
SAN FRANCISCO
SAN FRANCISCO CALIFORNIA

*MISSION BAY
SETTLEMENT AGREEMENT
WESTERN PACIFIC PROPERTY*

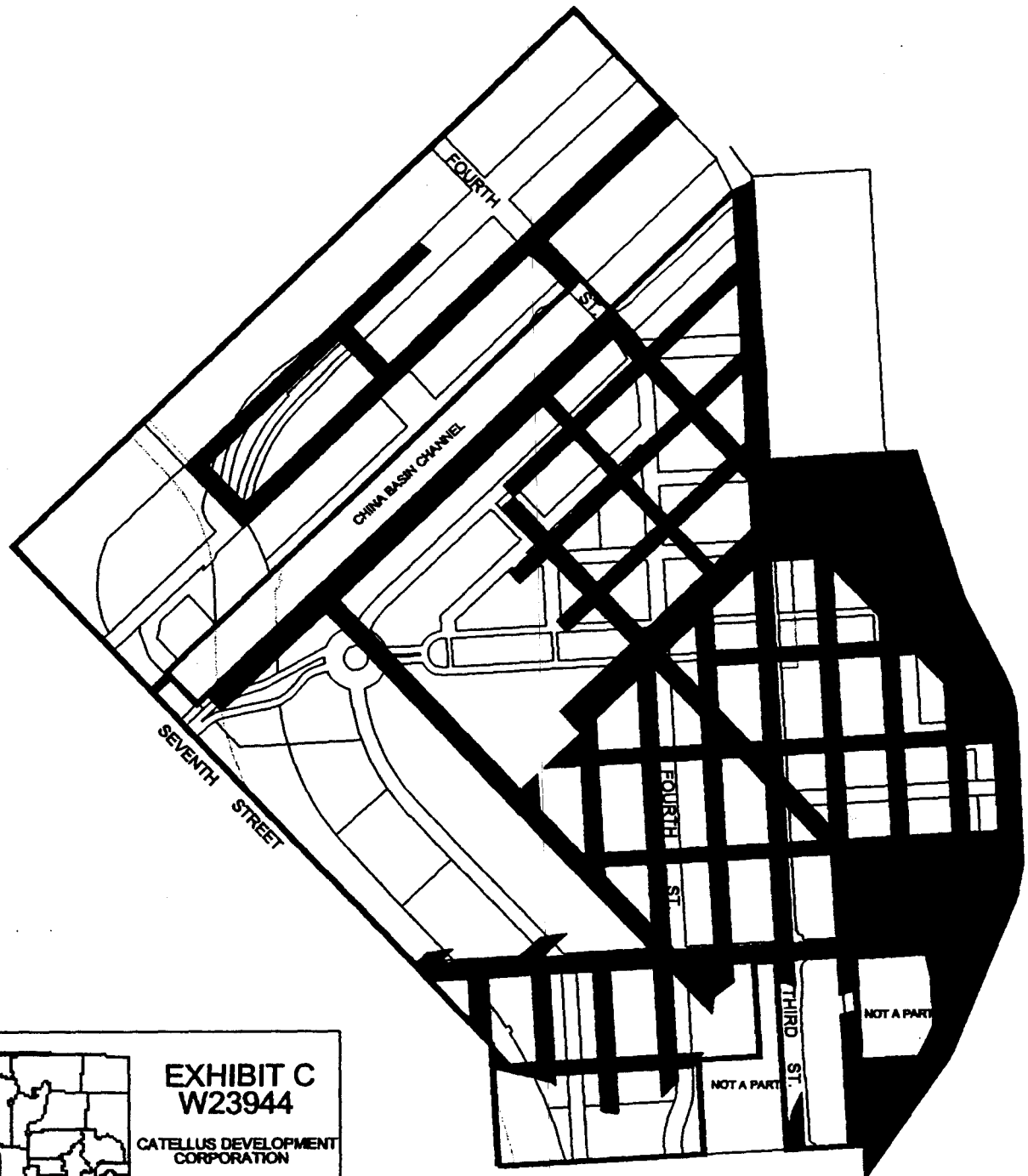
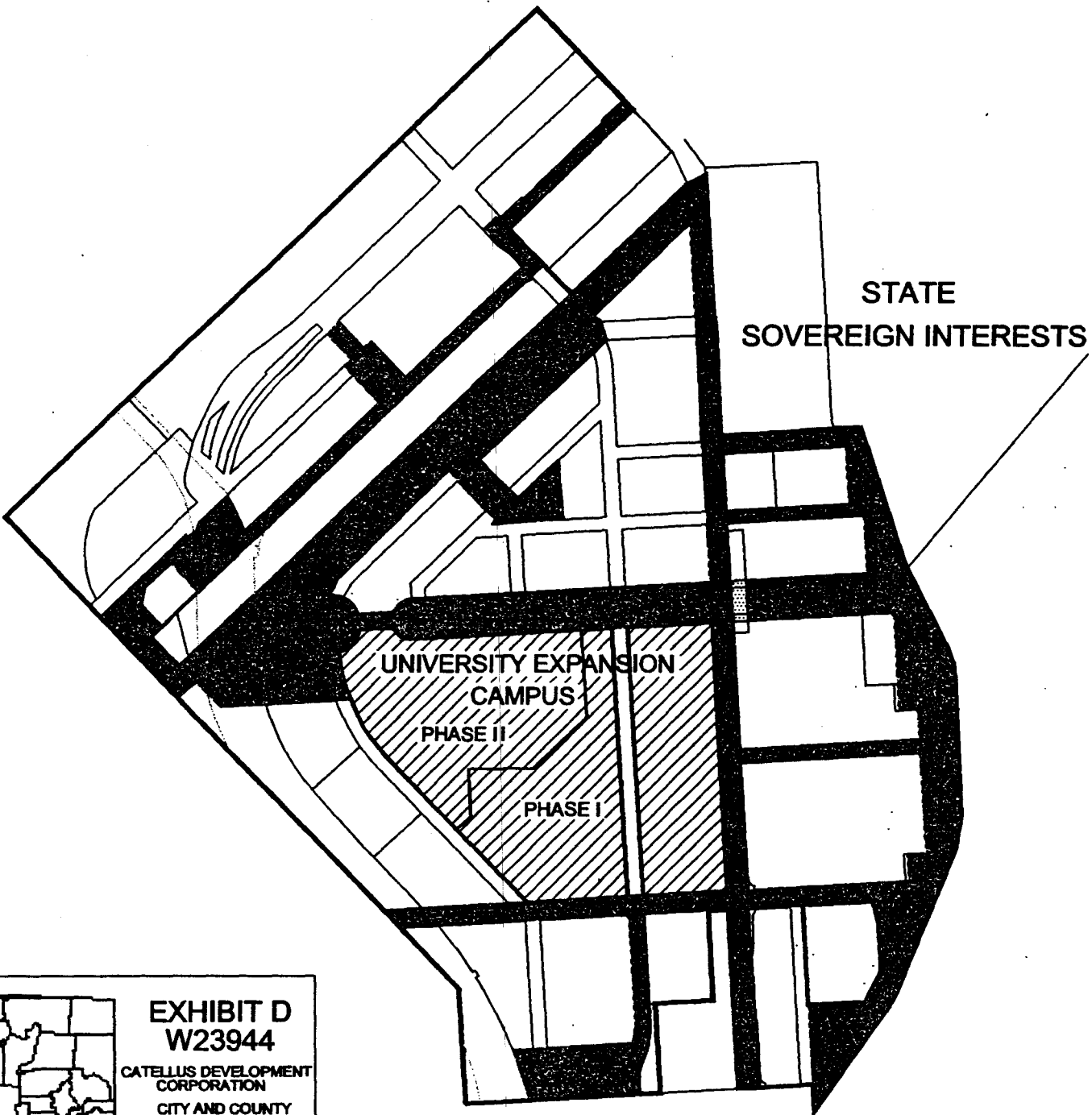
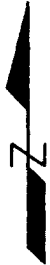


EXHIBIT C
W23944
 CATELLUS DEVELOPMENT CORPORATION
 CITY AND COUNTY OF
 SAN FRANCISCO
 SAN FRANCISCO
 CALIFORNIA

MISSION BAY DEVELOPMENT AREA
EXISTING AND ASSERTED SOVEREIGN TITLE INTERESTS

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STATE
SOVEREIGN INTERESTS

UNIVERSITY EXPANSION
CAMPUS
PHASE II
PHASE I

EXHIBIT D
W23944
CATELLUS DEVELOPMENT
CORPORATION
CITY AND COUNTY
OF
SAN FRANCISCO
SAN FRANCISCO
CALIFORNIA

MISSION BAY DEVELOPMENT AREA

*SOVEREIGN INTERESTS FOLLOWING THE RECORDING
OF THE AGREEMENT CONCERNING THE PUBLIC TRUST
AND ITS PATENTS AND DEEDS*

 *TO BE CONVEYED TO STATE IF
CATELLUS/CITY ACQUIRES*

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