

MINUTE ITEM

This Calendar Item No. 31
was approved as Minute Item
No. 31 by the State Lands
Commission by a vote of 2
to 0 at its 5-28-87
meeting.

CALENDAR ITEM

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05/28/87
W 503.1515
G 16-03
Kouyoumdjian
Townsend

**APPROVAL OF A SUBLEASE AND OF AN AGREEMENT REGARDING
GRANTED LANDS IN THE CITY OF CAPITOLA**

APPLICANT: City of Capitola
420 Capitola Avenue
Capitola, California 95010

BACKGROUND:

The tide and submerged lands in question, the Capitola Wharf and surrounding water area, were granted by the Legislature by Chapter 687, Statutes of 1935 to the County of Santa Cruz. Chapter 884 of Statutes of 1974 allowed the County to transfer this portion of the grant to the City of Capitola. The County of Santa Cruz authorized the transfer in 1978 which Capitola accepted and took subject to the grant provisions. The State Lands Commission has taken a number of actions to facilitate the implementation of the grant transfer and the refurbishing of the old Wharf. In 1979, the State Lands Commission, under a contract with the City, prepared a survey map of the grant transfer. In December 1979, the transfer was completed by a quitclaim recorded by the County. In July 1980, the State Lands Commission approved a trust fund for the holding of all monies which were to be received from the granted lands. The Commission also allowed the City to seek future reimbursement of \$158,000 to the City general funds of monies to be expended in wharf restoration. In August 1980, the State Lands Commission approved, as required by the grant, the expenditure of capital improvements in excess of \$250,000.

During the period 1979-1980, the Wharf restoration project was in progress. The City of Capitola had entered into an agreement with Richard Karleen, a local contractor. Karleen had acquired the lease rights of chapter lease, No. 20 (Chapter 69, Statutes of 1929) which included the Wharf and

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surrounding water areas. In June 1979, Karleen offered to dedicate his interest in the Wharf to the City in return for certain concession rights and a 25-year lease. A new lease and Concession Agreement was signed between the City and Karleen in September 1980. Under separate agreements with the Wildlife Conservation Board and the Department of Fish and Game, over \$800,000 was spent in renovating the Wharf.

The Wharf, unfortunately, was damaged by the severe storms of 1983. The City and State agencies spent an additional \$250,000 to repair the Wharf. Therefore, approximately \$1 million has been expended in the repair and restoration of the Wharf.

THE LAWSUIT:

At its December 11, 1986 meeting, the City Council of Capitola found that Karleen's Corporation running the Wharf had no paid rent since 1985 and was in arrears approximately \$37,000. However, rather than terminate the lease the Council voted 4 to 1 to buy out the remainder of Karleen's lease for \$290,000. A suit was filed in December 1986, by a former City Councilman, Dennis Beltram, charging that the buy-out agreement was a gift of public funds and an illegal expenditure.

The City's reasons for the buy-out were detailed in Declarations filed with the Court for the hearing on the Preliminary Injunction. The City Manager stressed the important role the Wharf has for the appearance of the town. The restaurant, bait shop, and mooring operation had failed to operate up to expectations. The corporation holding the lease tried to sell its interest in three different escrows, all of which failed to close. The lease payment to the City fell in arrears in 1985. The corporation had indicated that it was considering filing bankruptcy. The City believed, and still believes, that to obtain the lease rights quickly would allow it to place new concessionaires on the Wharf and get it running to the public benefit.

The matter went to hearing before the Santa Cruz Superior Court. Judge William Kelsay issued an order granting a Preliminary Injunction.

On the eve of trial, March 16, 1987, the tenant paid over \$7,000 in back rent, bringing to almost \$49,000 the back rent paid within the last week preceding trial. Thereupon, plaintiffs decided to dismiss the action, without prejudice.

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Plaintiffs sought attorney's fees and costs and moved to exonerate the \$25,000 bond that several Capitola citizens had posted in the action.

On May 12, 1987, Judge Christopher C. Cottle granted the plaintiffs' motion for attorney's fees and costs, concluding that plaintiffs were the prevailing parties and the action was brought to enforce an important right affecting the public interest. However, the judge denied the plaintiffs' motion to exonerate the bond. The result is that the City of Capitola will have to pay almost \$10,000 in attorney's fees and costs to four plaintiffs' attorneys, but the City has the opportunity to make a claim against the bond in the future.

SLC INVOLVEMENT:

The Commission has authorized staff to take all steps necessary to assure proper operation of the Capitola Wharf.

Staff has met with the City and the plaintiff. A clarification has been reached with the City regarding the nature of the City's expenditures that would appear to resolve questions involving the grant trust fund. This understanding has been proposed as an agreement to be executed by the City and the State Lands Commission.

The general terms of the agreement include:

1. City reports that all back rent and interest have been collected by the City. The City is auditing the amounts and will collect any additional amount at close of escrow.
2. The rent will be deposited into the City's trust account. All future City revenue goes to the trust account.
3. No trust funds will be expended by the City for the purpose of lease buy-out, nor for payment of promissory notes assumed by the City.
4. Future lessees will not be obligated to pay the promissory notes.
5. If in the future the City should seek reimbursement from the trust monies, they must demonstrate that they have exercised the care, skill, and prudence of a trustee under California law.

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6. New lease documents must be approved by the Commission for the next five years.
7. To ensure compliance with the existing lease and any lease or leases that may replace it, State Lands Commission is given status as a third party beneficiary. Thus, State Lands Commission may independently seek and obtain compliance of any lease, in case any breach of lease obligations occurs.
8. Any new arrangements involving compensation to the City (e.g., leases, subleases, licenses, permits, or concession agreements) relating to use of the Wharf must be first approved by State Lands Commission.
9. If City makes any arrangements with noteholders pursuant to the Agreement that make any leasehold interest security for payments on promissory notes, such arrangements shall not give the noteholder the right to undertake operation of the leasehold in the event of nonpayment or to assign the leasehold interest. Furthermore, any such security arrangements shall be limited to the master lease, and shall not pledge as security any subleases.

In addition to the Agreement, it is requested that the Commission approve the sublease between the City of Capitola as Sublessor and Capitola Mooring and Marine Supply, a corporation, a Sublessee. The sublease is for the commercial operation of a bait and tackle shop on the Capitola wharf; charter boat operations; boat rentals, sales, and repairs; boat hoist operation; boat shuttle service to and from moored boats; and mooring operations. The term of the lease is for 24 months and two days, from May 29, 1987 to midnight May 30, 1989, with successive options to renew the lease for up to three additional terms of sixty (60) months each, subject to certain conditions.

Annual rent is the greater of \$13,000 or an annual percentage equal to five percent (5%) of Lessee's gross sales and business transacted. Rent shall be paid monthly.

The State Lands Commission is a third party beneficiary of the sublease for purposes of rent collection and ensuring that all trustee responsibilities are met.

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OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Adm. Code 15378.

AB 884: N/A.

EXHIBITS: A. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. ADM. CODE 15378.
2. APPROVE THE AGREEMENT BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF CAPITOLA.
3. APPROVE THE SUBLEASE BETWEEN THE CITY OF CAPITOLA AS SUBLESSOR AND CAPITOLA MOORING AND MARINE SUPPLY, INC. AS SUBLESSEE, WITH THE STATE LANDS COMMISSION AS THIRD-PARTY BENEFICIARY. REGARDING THIS SUBLEASE, THE COMMISSION MAKES ALL THE FOLLOWING DETERMINATIONS:
 - A. THAT SUCH SUBLEASE IS IN ACCORDANCE WITH THE TERMS OF THE GRANT OR GRANTS UNDER WHICH TITLE TO THE TIDE OR SUBMERGED LANDS IN QUESTIONS ARE HELD.
 - B. THAT THE PROCEEDS OF SUCH LEASE SHALL BE DEPOSITED IN AN APPROPRIATE FUND EXPENDABLE ONLY FOR STATEWIDE PURPOSES AUTHORIZED BY A LEGISLATIVE GRANT.
 - C. THAT SUCH LEASE IS IN THE BEST INTERESTS OF THE STATE.

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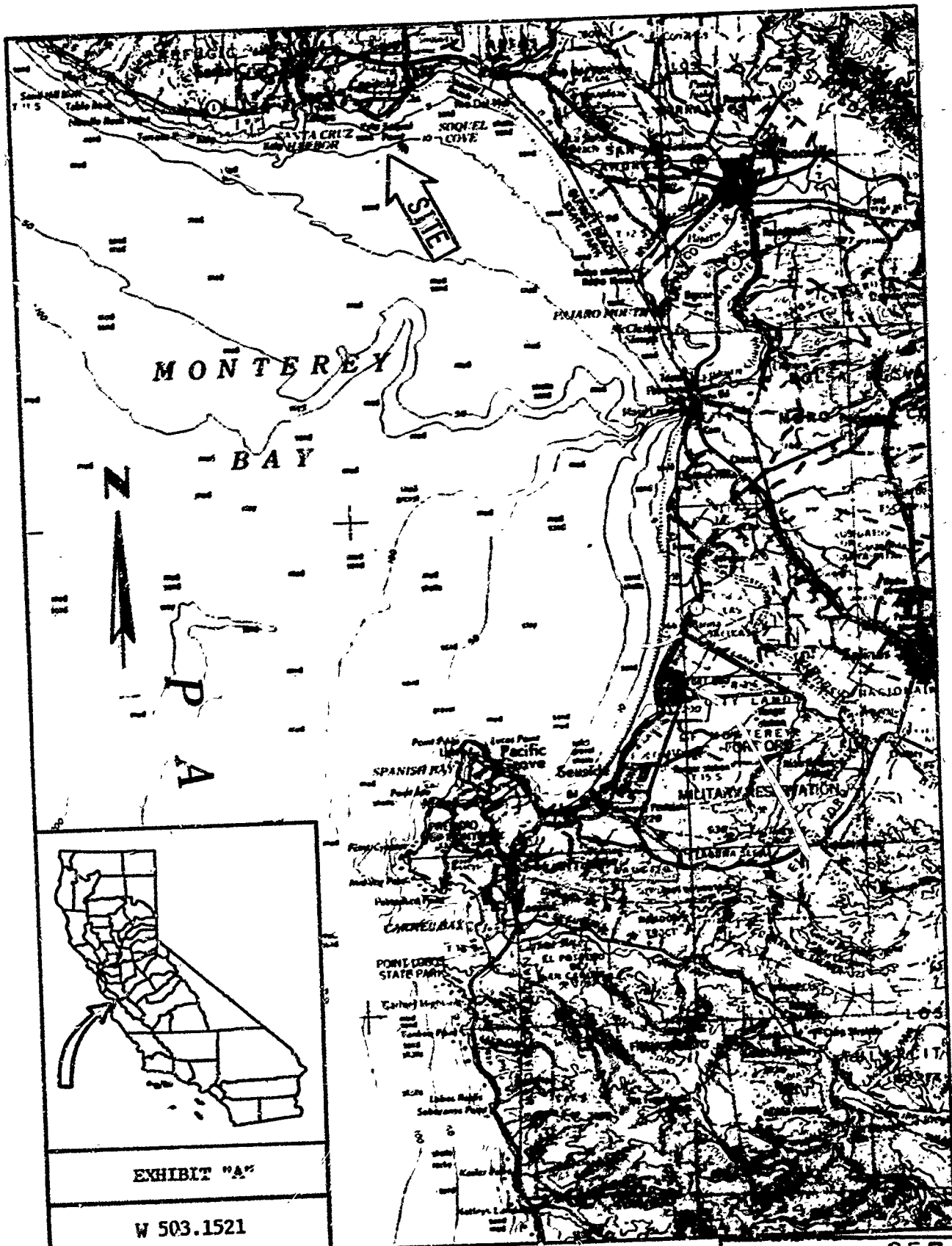


EXHIBIT "A"

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