

MINUTE ITEM

This Calendar Item No. 50
was approved as Minute Item
No. 50 by the State Lands
Commission by a vote of 3
to 0 at its 1-21-88
meeting.

CALENDAR ITEM

A 28
S 17

50

01/21/88
W 503.1515
G 16-03
Simmons
Townsend

**APPROVAL OF A LEASE OF 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 to the County of Santa Cruz by Chapter 687 of the Statutes of 1935. The County was allowed to transfer a portion of this grant to the City of Capitola by Chapter 884 of the Statutes of 1974. The County authorized the transfer in 1978 which was accepted by the City subject to the terms of the grant.

In 1980, the City entered into a Concession-Lease Agreement for the operation of a bait shop, boat launching facility, mooring area and snack bar on the Wharf. For various reasons, the lease was not as remunerative as the City had hoped it would be and the lessee fell behind in its rent. In December 1986, the City entered into an agreement to purchase the leasehold interest.

In May 1987 (Minute Item 31), the State Lands Commission entered into an Agreement with the City to assure the non-involvement of trust funds in the lease buy-out or for payment of promissory notes. Among other things, the Agreement also provides for Commission approval, for a five-year period, of all new lease agreements for the Wharf. To ensure compliance with the existing lease and any leases that may replace it, the Commission is given status as third party beneficiary. Thus, the Commission may independently seek and

obtain compliance of any lease, in case any breach of lease obligations occur. At the time the Commission approved the Agreement, it also approved a sublease between the City of Capitola as Sublessor and Capitola Mooring and Marine Supply, a corporation, as Sublessee.

The City has now requested that the Commission approve the proposed sublease between the City of Capitola as Sublessor and Joseph and Anna Maria Zenchak, as Sublessees. This sublease is for the operation of a restaurant/snack bar business located on the Wharf. The term of the sublease is for 60 months, from January 1, 1988 to December 31, 1993, with options for two additional 60-month periods upon fulfillment of certain lease conditions. Annual rent for the first year is \$16,200, and \$21,600 for the second year. Thereafter, annual rent is the greater of \$21,600 or an annual percentage equal to five percent (5%) of Sublessee's gross sales and business transactions.

The State Lands Commission is a third party beneficiary to the lease for purposes of assuring that trust responsibilities are fully met.

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.

(CALENDAR ITEM NO. 50 CONT'D)

2. APPROVE THE SUBLEASE BETWEEN THE CITY OF CAPITOLA AS SUBLESSOR, JOSEPH AND ANNA MARIA ZENCHAK AS SUBLESSEE, AND THE STATE LANDS COMMISSION AS A THIRD PARTY BENEFICIARY WITH THE FOLLOWING DETERMINATIONS:
 - A. THAT SUCH SUBLEASE IS IN ACCORDANCE WITH THE TERMS OF THE GRANTS UNDER WHICH TITLE TO THE TIDE AND SUBMERGED LANDS ARE HELD;
 - B. THAT THE PROCEEDS OF SUCH SUBLEASE SHALL BE DEPOSITED IN AN APPROPRIATE FUND EXPENDABLE ONLY FOR STATEWIDE PURPOSES AS AUTHORIZED BY LEGISLATIVE GRANT OR COMMISSION APPROVAL; AND
 - C. THAT SUCH SUBLEASE IS IN THE BEST INTERESTS OF THE STATE.

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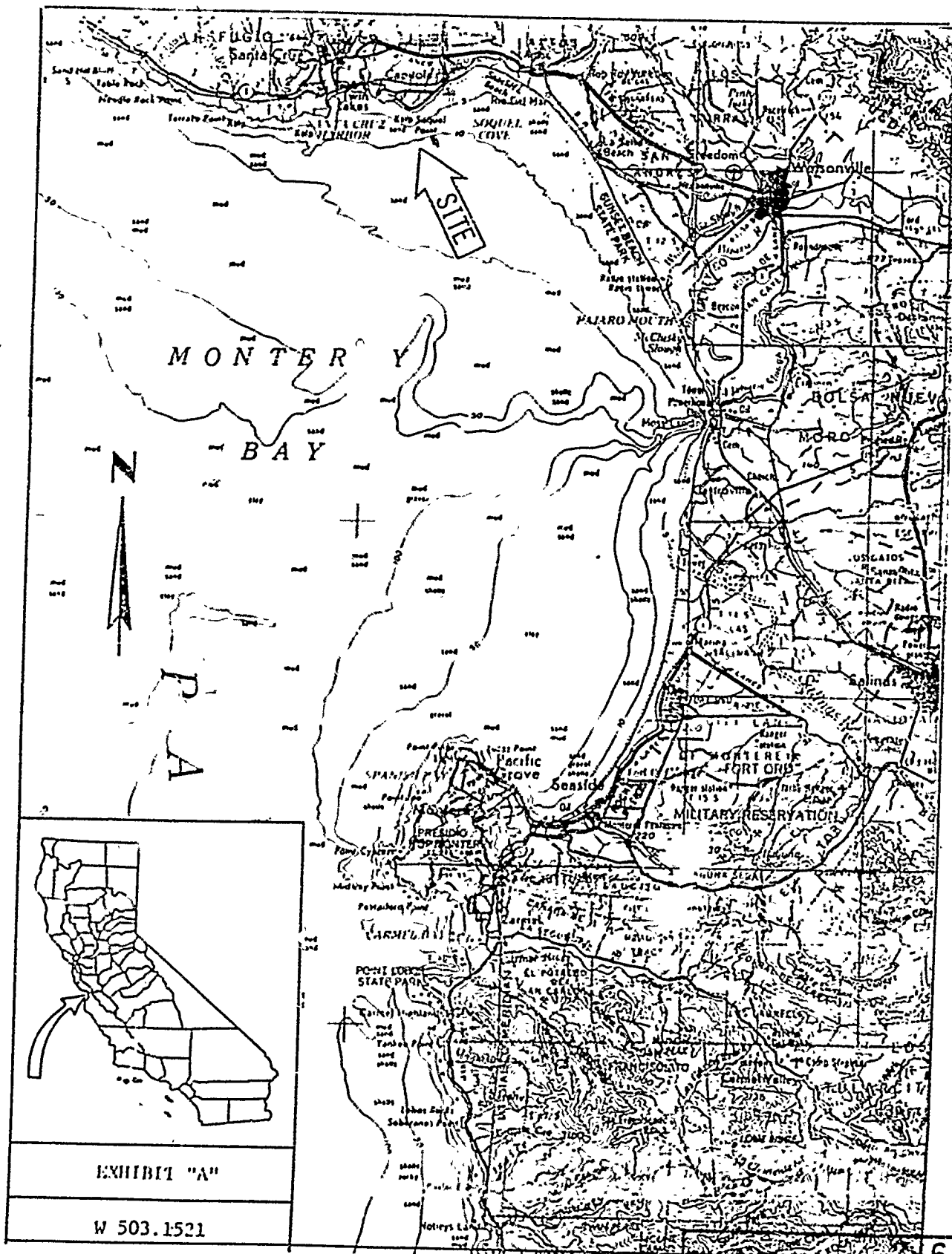


EXHIBIT "A"

W 503.1521

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