

MINUTE ITEM

This Calendar Item No. 69 was approved as
Minute Item No. 69 by the California State Lands
Commission by a vote of 3 to 0 at its
09-13-07 meeting.

**Minute Item
69**

09/13/07
PRC 8513
J. Frey

**ROBERT L. HULBERT
(LESSEE/APPLICANT)**

Regular Item 69: The Commission listened to a staff presentation and comments from the lessee concerning his failure to comply with the terms and conditions of his lease for a covered floating boat dock. After much discussion the Commission gave the lessee the option of removing the dock or modifying the current structure to conform more closely to the lease application, allowing the expanded constructed length and width of the dock and boathouse and gangway length, and the spiral stairway, but requiring the removal of all other unauthorized development, including reducing the overall height of the structure to conform with that shown on the application submitted in 2003 for the existing lease. The Commission also gave the lessee 180 days to remove or modify the dock; and until October 31, 2008 to remove pilings (if necessitated by the USACE/USFWS construction window); the lessee was given 30 days in which to notify the Commission what option he chose. The action was approved by a 3-0 vote.

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CALENDAR ITEM

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WP 8513.1

V. Caldwell

J. Frey

**CONSIDER DENIAL OF AN APPLCATION TO AMEND LEASE NO. PRC 8513.1,
A GENERAL LEASE - RECREATIONAL USE,
AND AUTHORIZE NOTIFICATION OF DEFAULT AND TERMINATION OF SAID
LEASE**

LESSEE:

Robert L. Hulbert

AREA, LAND TYPE, AND LOCATION:

0.076 acres, more or less, of sovereign lands in the Sacramento River, near the city of Sacramento, Sacramento County.

AUTHORIZED USE:

The construction, use and maintenance of a covered floating boat dock, pilings, and gangway.

LEASE TERM:

Ten years, beginning April 1, 2004.

CONSIDERATION:

\$415 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Combined single limit coverage of no less than \$500,000.

OTHER PERTINENT INFORMATION:

1. Lessee owns an undivided one-sixth interest in the unimproved uplands adjoining the lease premises. The remaining interest holders (five-sixths) indicated, in writing, that they did not object to the issuance of a lease for the construction of the dock.

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2. On April 5, 2004, the Commission authorized a General Lease – Recreational Use to Robert L. Hulbert for the construction, use and maintenance of a 40' x 32' (erroneously stated as 40' x 34' in the Lease document) covered floating boat dock, with a 34-foot by 14-foot slip (having a floor elevation of 13 feet), four pilings, and a four-foot by 52-foot gangway.
3. Construction of the dock began in 2005. Once the dock was in place, staff received a complaint from a member of the public expressing concern over the size of the dock.
4. On June 26, 2007, staff met with Mr. Hulbert and conducted a site inspection of the Lease Premises to determine whether the improvements were constructed as authorized by the Commission. Mr. Hulbert stated that all of the improvements were completed except for the sealing of the upper deck on the boat dock.
5. On July 5, 2007, Commission staff mailed a letter to Mr. Hulbert stating that, based on the site inspection and a preliminary analysis; it appeared that the covered boat dock was not constructed as approved and that additional unauthorized improvements were placed on the Lease Premises. In that letter, Commission staff advised that until a thorough analysis was completed, Mr. Hulbert must immediately stop all work on the dock/deck until a more definitive determination could be made by staff as to whether the improvements were constructed as authorized.
6. In early August 2007, Commission staff completed its analysis and on August 7, 2007, a certified letter was sent to Mr. Hulbert advising him of the defaults of the following lease covenants:

A) Section 4, paragraph 4(d) **Additions, Alterations and Removal**

- a. Additions - No improvements other than those expressly authorized in the Lease shall be constructed by the Lessee on the Lease Premises without prior written consent of Lessor.
- b. Alteration or Removal – Except as provided under the lease, no alteration or removal of improvements on or natural

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features of the Lease Premises shall be undertaken without prior written consent of Lessor.

The letter contained a summary of the unauthorized improvements, outlined below, that constituted defaults under the terms of the Lease:

- a) The boat dock is 252 square feet larger than authorized.
 - b) The boat slip is 248 square feet larger with an unauthorized sundeck. The elevation of the boathouse is 20 feet, which is seven feet higher than authorized.
 - c) The spiral staircase was not authorized.
 - d) The gangway is ten-feet longer than authorized.
 - e) A 144 square foot enclosed cabana kitchen unit with:
 - 1) Electric grill and cooktop
 - 2) Sink with garbage disposal
 - 3) Dishwasher
 - 4) Two refrigerators
 - f) A toilet, sink, and shower were constructed in the boat slip
 - g) Sewer line
7. On August 10, 2007, the U.S. Army Corps of Engineers (Corps) sent Mr. Hulbert a letter stating that he had not complied with the terms and conditions of the Corps permit. Pursuant to the Corps letter, the dock as built does not conform to the design permitted and the cabana kitchen and bathroom are prohibited pursuant to Special Condition 10 of General Permit 23. Mr. Hulbert was directed by the Corps to remove all unauthorized structures and modifications and construct the dock in accordance with the specifications originally permitted within 30 days of receipt of the Corps notification.
8. On August 13, 2007, Mr. Hulbert met with Commission staff to discuss the defaults under the terms and conditions of the Lease. Mr. Hulbert was advised to remove the unauthorized improvements and to reconfigure the boathouse to the original covered floating dock dimensions, as authorized by the Commission, within the 30-day cure period set forth in Section 4, Paragraph 11 of the Lease. Mr. Hulbert indicated that he would submit an application to amend the Lease to include the unapproved additions.
9. On August 15, 2007, Commission staff mailed a certified letter to Mr. Hulbert confirming the August 13, 2007 meeting regarding the curing of

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defaults of the Lease, which were outlined in the August 7, 2007 letter. The defaults were to be addressed by Mr. Hulbert in the form of a letter or application for lease amendment by August 22, 2007, stating what remedies he would be making to cure each of the defaults. The letter further stated that if no response had been received by close of business on August 22, 2007, staff would recommend that the Commission find Mr. Hulbert in default of the lease covenants and the Lease be terminated.

10. Mr. Hulbert, under Section 4, Paragraph 11 of the Lease, has the right to cure defaults within 30 days of receipt of a notice of default. The notice of default pertaining to the unauthorized additions and alterations was received by Mr. Hulbert on August 8, 2007. Under the terms of the Lease, where a lessee has failed to cure its defaults, the Commission has the right to re-enter the Lease Premises and remove all improvements; or terminate the Lease upon Lessee's receipt of Lessor's intention to do so; or exercise any other right or remedy available to Lessor.
11. On August 22, 2007, Mr. Hulbert submitted an application for amendment of the Lease. The application seeks to add all of the above listed accessories and the increased dock dimensions to the original authorized covered floating dock on the Lease Premises.
12. As of September 13, 2007, Mr. Hulbert has not removed the unauthorized additions or alterations and the 30-day cure period has passed.
13. Staff believes that the cabana and its accessories on the sundeck and the sink, toilet and shower on the lower level of the dock have no connection or use for the docking and mooring of boats and recommends that they be removed from the dock and that the dock be reconstructed as previously authorized by the Commission. As stated above, Mr. Hulbert has submitted an application to retain these improvements. Staff is recommending denial of that application to amend the Lease. If Mr. Hulbert refuses to remove the unauthorized accessories or reduce the size of the dock structure, then staff recommends termination of the Lease and that Mr. Hulbert be directed to remove the covered floating dock and all improvements from the Lease Premises and to otherwise restore the Lease Premises to their condition prior to issuance of the Lease.
14. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)],

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the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBITS:

- A. Site and Location Map
- B. Improvements as Authorized and as Constructed

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

1. DENY THE APPLICATION SUBMITTED BY ROBERT L. HULBERT TO AMEND LEASE NO. PRC 8513.1, A GENERAL LEASE - RECREATIONAL USE, TO INCLUDE ALL OF THE UNAUTHORIZED IMPROVEMENTS AND ACCESSORIES ON THE COVERED FLOATING BOAT DOCK AND THE INCREASED DOCK DIMENSIONS, AS IDENTIFIED IN COMMISSION STAFF'S LETTER OF AUGUST 7, 2007.
2. RATIFY STAFF'S FINDING THAT ROBERT L. HULBERT, AS THE STATE'S LESSEE, IS IN DEFAULT UNDER LEASE PRC 8513.1, FOR PLACING UNAUTHORIZED IMPROVEMENTS AND ACCESSORIES ON THE BOATHOUSE AND FOR THE ALTERATION OF APPROVED DIMENSIONS OF THE COVERED FLOATING BOAT DOCK AND GANGWAY.
3. AUTHORIZE STAFF TO 1) ISSUE A NOTICE OF TERMINATION TO ROBERT L. HULBERT BECAUSE OF THE ABOVE RECITED DEFAULTS; 2) REQUIRE THE REMOVAL OF ALL IMPROVEMENTS AND THE RESTORATION OF THE LEASE PREMISES TO THEIR

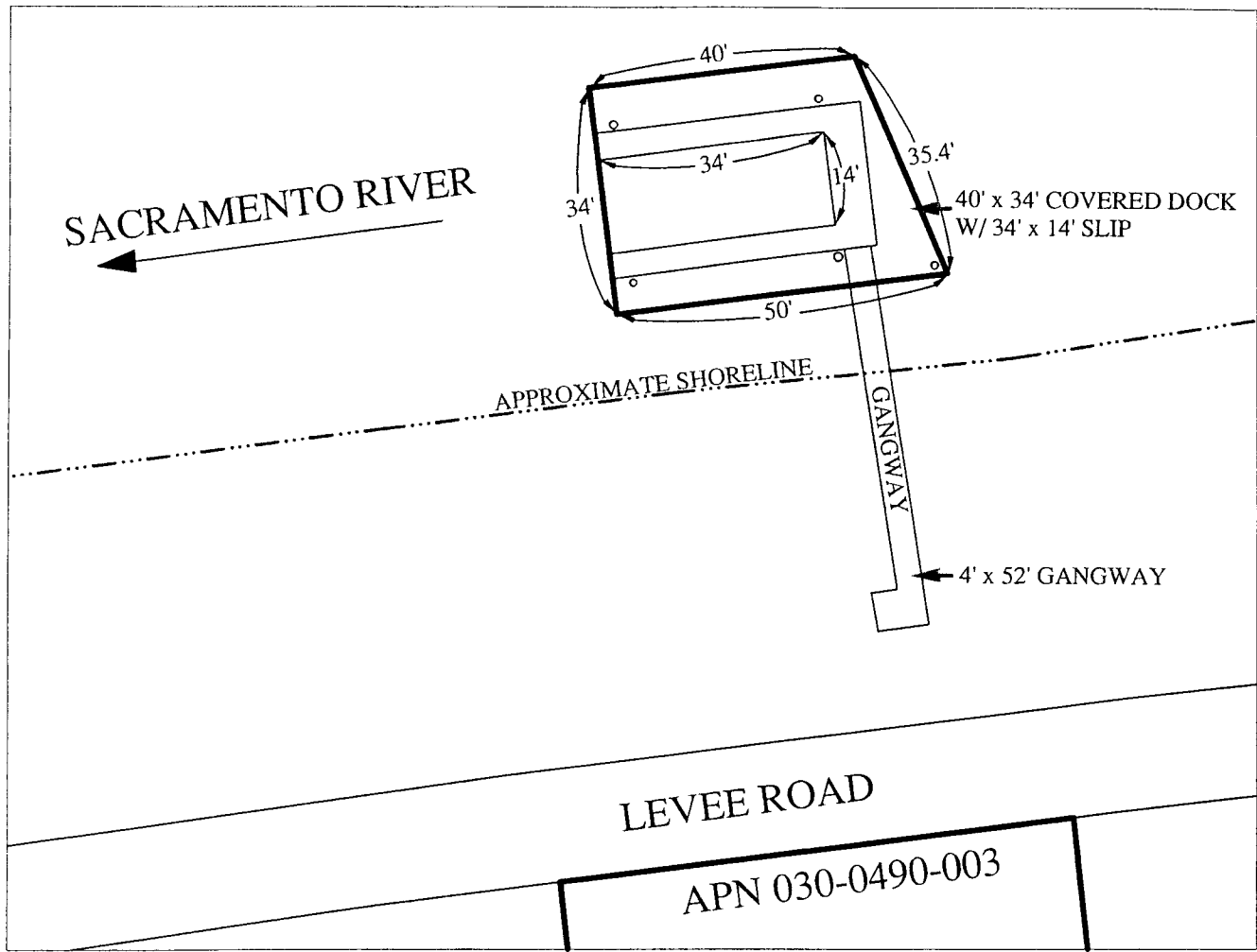
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NATURAL CONDITION WITHIN 90 DAYS AFTER TERMINATION PURSUANT TO SECTION 4, PARAGRAPH 12 OF THE LEASE; AND 3) TERMINATE LEASE NO. PRC 8513.1 ISSUED TO ROBERT L. HULBERT PROVIDED THAT ROBERT L. HULBERT HAS NOT CURED THE DEFAULTS OF THE LEASE COVENANTS.

4. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO TERMINATE THE LEASE OF ROBERT L. HULBERT AND TO REMOVE THE IMPROVEMENTS FROM THE LEASE PREMISES.

NO SCALE

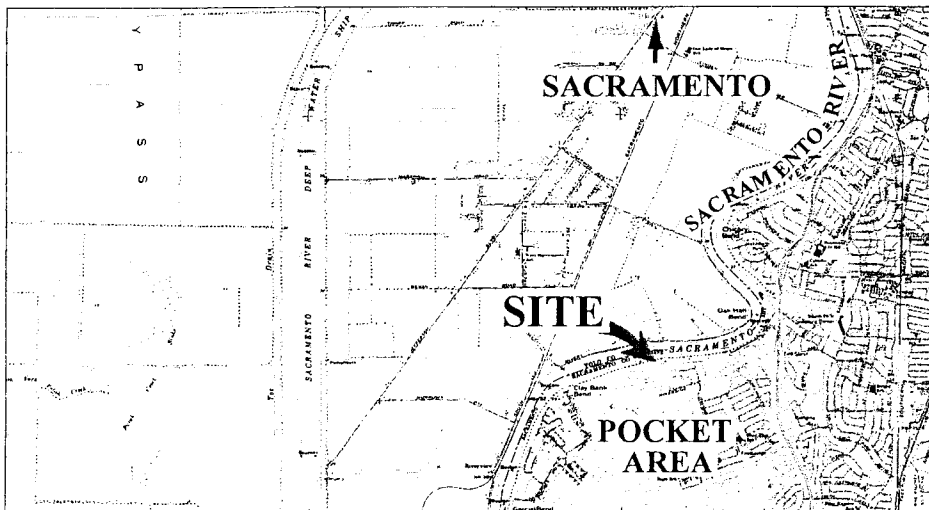
SITE



673 BRICKYARD DR.
SACRAMENTO RIVER, SACRAMENTO COUNTY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 8513
HULBERT
APN 030-0490-003
GENERAL LEASE
RECREATIONAL USE
SACRAMENTO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties 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.

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EXHIBIT B

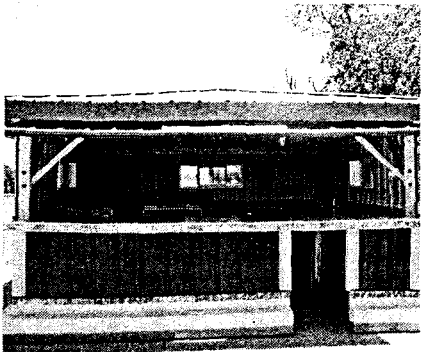
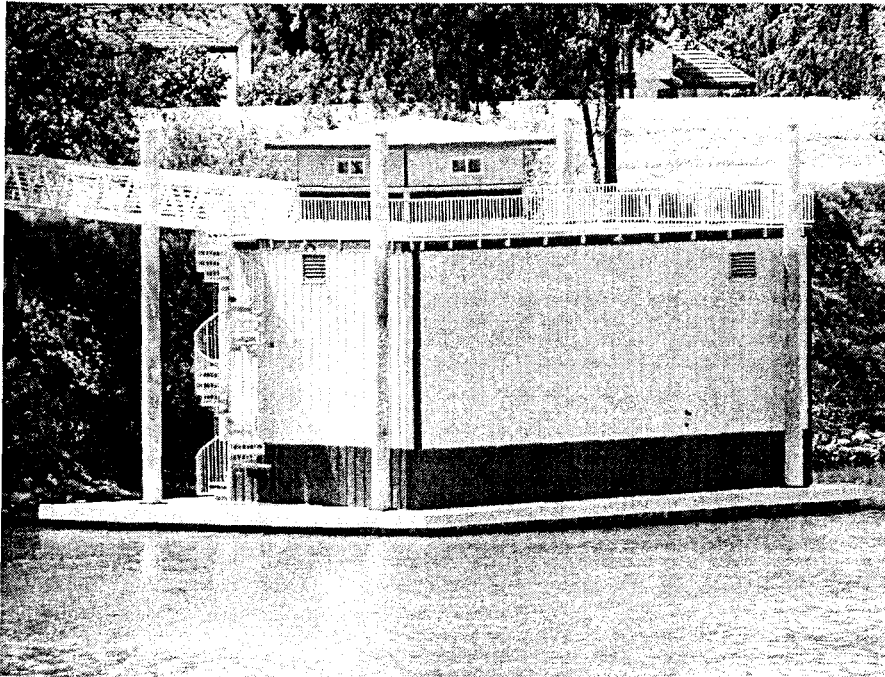
673 Brickyard Drive, Sacramento

AUTHORIZED IMPROVEMENTS

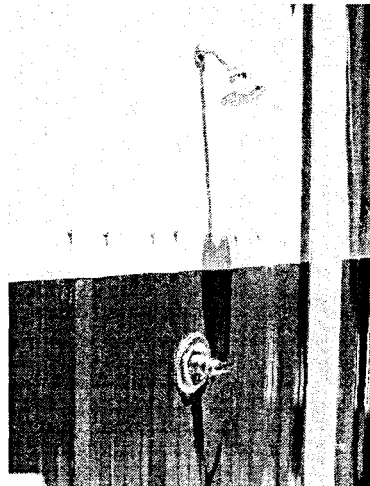
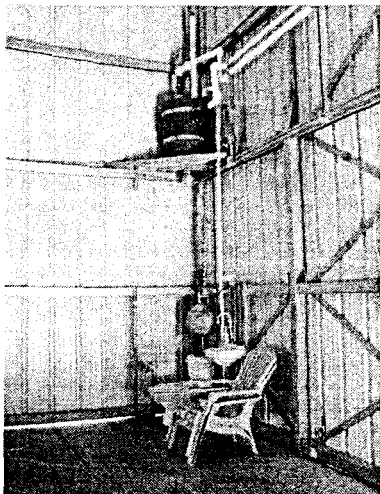
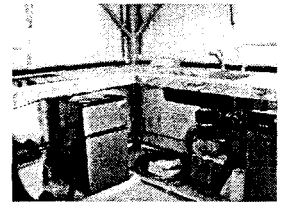
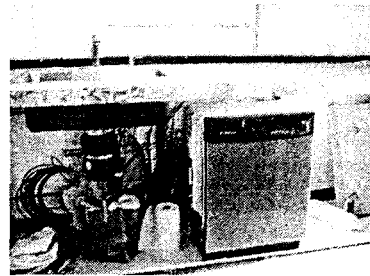
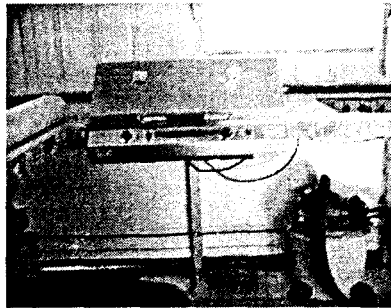
40' x 34' Dock
34' x 14' Slip
4' x 52' Gangway
4 (80') Steel Piles
Elevation 13-feet

AS CONSTRUCTED

47.7' x 32.31' x 58.3' x 34' - Entire Floating Dock
42.5' x 23.5' Enclosed Boathouse
42.5' x 23.5' Sun Deck
Elevation 20-feet
4' x 64' Gangway
12' x 12' Cabana with Kitchen
All sides lift up like wings
Marble / Tile Countertop
Electric Grill and Cooktop
Sink with Garbage Disposal
Dishwasher
Two Refrigerators



Lower Level As Built
Toilet, Sink, Shower, Sewer



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