

MINUTE ITEM

This Calendar Item No. 35 was approved as
Minute Item No. 35 by the California State Lands
Commission by a vote of 3 to 0 at its
12-03-07 meeting.

**Minute Item
35**

12/03/07
PRC 8513
B. Dugal
J. Frey

**ROBERT L. HULBERT
(LESSEE)**

Regular Item 35: The Commission listened to a staff report and was then asked for authorization to terminate lease, and adoption of related findings, involving sovereign lands located in the Sacramento River for an existing covered floating boathouse and dock. The Commission approved the item as presented by a 3-0 vote.

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CALENDAR ITEM

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12/03/07

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PRC 8513.1

B. Dugal

J. Frey

**AUTHORIZATION OF NOTIFICATION OF DEFAULT FOR FAILURE TO COMPLY
WITH THE TERMS AND CONDITIONS OF LEASE NO. PRC 8531.1;
AUTHORIZATION TO TERMINATE SAID LEASE; AND ADOPTION OF RELATED
FINDINGS**

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.

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BACKGROUND INFORMATION:

On April 5, 2004, the Commission authorized the issuance of a General Lease – Recreational Use to Mr. Hulbert for the construction, use and maintenance of a covered 40' x 32' floating boat dock (having a floor total height of 13' above the dock), four pilings, and a four-foot x 52-foot gangway.

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 boat dock structure.

Because of the complaint, staff conducted a site inspection and determined that the improvements were not constructed as authorized. Subsequently, staff advised Mr. Hulbert of the defaults of the lease on August 7, 2007 via certified letter. The defaults, as outlined in the letter, violated the following provisions of the Lease:

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

A summary of the unauthorized improvements that constituted a default under the terms of the Lease are summarized as follows:

- a) The boat dock is approximately 252 square feet larger than authorized.
- b) The boat slip is approximately 248 square feet larger than authorized with an unauthorized sundeck and railing. The elevation of the boathouse is 20 feet, which is seven feet higher than authorized.
- c) The spiral staircase.
- d) The gangway is ten-feet longer than authorized.

CALENDAR ITEM NO. 35 (CONT'D)

- e) A 144 square foot enclosed cabana (nine feet high) with a kitchen unit (all located on top of the 20 foot high boat dock) including the following in the cabana:
 - 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 boathouse
- g) Sewer line

Pursuant to Section 4, Paragraph 11 of the Lease, Mr. Hulbert 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 the lessee's receipt of the Lessor's intention to do so; or exercise any other right or remedy available to the Lessor.

On August 22, 2007, Mr. Hulbert submitted an application for amendment of the Lease. The application sought to add all of the above listed accessories and the increased dock dimensions (a. through g.) to the original authorized covered floating dock on the lease premises.

CURRENT SITUATION:

On September 13, 2007, staff presented an item to the Commission with respect to Mr. Hulbert and the defaults under the lease and recommended that certain actions be taken, which are summarized below:

- 1) Deny the application to amend the lease that was submitted by Mr. Hulbert
- 2) Ratify staff's finding that Mr. Hulbert was in default of the lease for placing unauthorized improvements on the lease premises.
- 3) Authorize staff of the Commission to issue a notice of lease termination to Mr. Hulbert and require removal of the improvements, and terminate the lease if Mr. Hulbert did not cure the defaults.

CALENDAR ITEM NO. 35 (CONT'D)

- 4) Authorize staff of the Commission and the Attorney General to take all steps necessary, including litigation, to terminate Mr. Hulbert's lease.

During the meeting, Mr. Hulbert made a presentation to the Commission. After discussion, the Commission offered the following two options to Mr. Hulbert:

- 1) Remove the structure in its entirety, or
- 2) Retain the floating covered boat dock as-built including the additional length, width, spiral staircase, and gangway. However, the height of the structure would have to be reduced to conform to what was applied for and previously authorized under the lease (13 feet high).

The Commission gave Mr. Hulbert 30 days to decide which option he would pursue. The Commission also directed Mr. Hulbert to immediately remove the following unauthorized improvements from the boat dock: the enclosed kitchen cabana with electric grill and cook top, sink with garbage disposal, dishwasher and two refrigerators, and the toilet, sink, shower constructed on the lower level of the dock, and the sewer, water and power lines. Removal or modification of the boat dock structure must take place within 180 days; except that those items that would require in-water work (i.e., pile removal) would need to be completed by October 31, 2008. The Commission Chair indicated that if there were need for clarification of the action taken, staff could return to the Commission at the next meeting. The matter is being brought back to the Commission for adoption of written findings consistent with the Commission's prior action.

On October 1, 2007, the Department of Water Resources (DWR) sent Mr. Hulbert a letter advising that the project was not constructed in accordance with the plans submitted to the Reclamation Board (Board) to obtain Permit No. 17609. DWR advised Mr. Hulbert that by October 31, 2007 he needs to submit a revised application or further actions will be taken by the Board.

On October 12, 2007, staff received a letter, attached as Exhibit B, from Mr. Hulbert's counsel advising that they would be challenging the decision of the Commission by filing a writ petition in Sacramento Superior Court. The letter further stated that Mr. Hulbert will not be making modifications to the boat dock nor would he be terminating the lease until the matter is adjudicated by the Court. The letter does indicate that Mr. Hulbert will remove the toilet and barbeque facility temporarily, pending the outcome of the Writ Petition.

CALENDAR ITEM NO. 35 (CONT'D)

On November 19, 2007, staff met with Mr. Hulbert's counsel and Gil Labrie with DCC Engineering. Mr. Hulbert's counsel offered that Mr. Hulbert would remove the cabana and kitchen (but would leave in place a covered shed for storage of life vests, etc.), the toilet, and cap the outdoor shower, but would leave the dock structure as-built (additional length, width, spiral staircase, gangway and additional height) with the sewage pump-out. Staff believes that this proposal is inconsistent with the Commission's direction and does not recommend accepting the proposal.

OTHER PERTINENT INFORMATION:

Total Removal of the Improvements:

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 under the general rule that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b) (3).

Total removal of the improvements would result in long term improvements to fish habitat, the public's recreational use, and river and bank aesthetics.

Removal of 1)144 Square Feet Enclosed Cabana, Including All Items Within; Electric Grill, Cook Top, Sink/Garbage Disposal, Dishwasher and Two Refrigerators, 2) Up-Flush Toilet, 3) 7" x 9" Sanitary Sink, and 4) Outdoor Shower:

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 categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 14, California Code of Regulations, section 15301(a).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

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Reduce Height of Floating Boat Dock to 13 Feet:

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 under the general rule that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b) (3).

Include Additional Footprint Area for Dock and Retain the Floating Covered Boat Dock As-Built with the Additional Length, Width, Spiral Staircase, and Gangway:

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 categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 14, California Code of Regulations, section 15301(a).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Site and Location Map
- B. October 12, 2007 Letter from Mr. Hulbert's Counsel

CALENDAR ITEM NO. 35 (CONT'D)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

TOTAL REMOVAL OF IMPROVEMENTS:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b) (3).

REDUCE HEIGHT OF FLOATING BOAT DOCK TO 13 FEET:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b) (3).

INCLUDE ADDITIONAL FOOTPRINT AREA FOR DOCK AND RETAIN THE FLOATING COVERED BOAT DOCK AS-BUILT WITH THE ADDITIONAL LENGTH, WIDTH, SPIRAL STAIRCASE, AND GANGWAY:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15301(e)(1).

REMOVAL OF 1)144 SQUARE FEET ENCLOSED CABANA, INCLUDING ALL ITEMS WITHIN; ELECTRIC GRILL, COOK TOP, SINK/GARBAGE DISPOSAL, DISWASHER AND TWO REFRIGERATORS, 2) UP-FLUSH TOILET, 3) 7" X 9" SANITARY SINK, AND 4) OUTDOOR SHOWER:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15301 (a).

CALENDAR ITEM NO. 35 (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

FINDINGS:

1. ADOPT THE FOLLOWING FINDINGS:

A. THAT ROBERT L. HULBERT IS IN DEFAULT OF SECTION 4, PARAGRAPHS 4(D)(1) AND 4(D)(2) **ADDITIONS, ALTERATIONS AND REMOVAL**, OF LEASE NO. PRC 8513.1, FOR ALLOWING THE CONSTRUCTION OF THE FOLLOWING UNAUTHORIZED IMPROVEMENTS:

- 1) THE BOAT DOCK IS LONGER AND WIDER THAN AUTHORIZED BY THE LEASE;
- 2) THE BOAT SLIP IS LARGER THAN AUTHORIZED BY THE LEASE AND CONTAINS AN UNAUTHORIZED SUNDECK AND RAILING;
- 3) THE ELEVATION OF THE BOATHOUSE STRUCTURE IS HIGHER THAN AUTHORIZED BY THE LEASE;
- 4) AN UNAUTHORIZED SPIRAL STAIRCASE;
- 5) AN UNAUTHORIZED ENCLOSED CABANA, WHICH INCLUDES THE FOLLOWING UNAUTHORIZED AMENITIES: ELECTRIC GRILL AND COOKTOP, SINK WITH GARBAGE DISPOSAL, DISHWASHER, TWO REFRIGERATORS;
- 6) UNAUTHORIZED IMPROVEMENTS ON THE BOAT SLIP AREA INCLUDE A TOILET, SINK, AND SHOWER; AND
- 7) AN UNAUTHORIZED SEWER LINE.

CALENDAR ITEM NO. 35 (CONT'D)

- B. WITHIN 180 DAYS OF SEPTEMBER 13, 2007, ROBERT L. HULBERT SHALL EITHER 1) REMOVE THE STRUCTURE IN ITS ENTIRETY AND RESTORE THE LEASE PREMISES TO ITS NATURAL CONDITION. IF NECESSITATED BY THE CORPS OF ENGINEERS OR U. S. FISH AND WILDLIFE SERVICE CONSTRUCTION WINDOW, ROBERT L. HULBERT SHALL HAVE UNTIL OCTOBER 31, 2008, TO REMOVE THE PILINGS OR 2) REDUCE THE HEIGHT OF THE STRUCTURE TO CONFORM AS TO WHAT WAS AUTHORIZED UNDER THE LEASE (13' HIGH).
- C. ROBERT L. HULBERT SHALL INFORM THE CALIFORNIA STATE LANDS COMMISSION IN WRITING WITHIN 30 DAYS OF DECEMBER 3, 2007, WHETHER HE WILL COMPLY WITH FINDING B, ABOVE, AND WHICH OF THE TWO OPTIONS IN FINDING B HE CHOOSES.
- D. IF ROBERT L. HULBERT FAILS TO INFORM THE CALIFORNIA STATE LANDS COMMISSION IN WRITING WITHIN 30 DAYS OF DECEMBER 3, 2007, THAT HE WILL UNEQUIVOCALLY COMPLY WITH ONE OF THE TWO OPTIONS PROVIDED FOR IN FINDING B ABOVE, THEN HE WILL CONTINUE TO BE IN DEFAULT.
- E. ROBERT L. HULBERT SHALL IMMEDIATELY REMOVE THE FOLLOWING UNAUTHORIZED IMPROVEMENTS: 1) THE ENCLOSED KITCHEN CABANA WITH ELECTRIC GRILL AND COOKTOP, SINK WITH GARBAGE DISPOSAL, DISHWASHER AND TWO REFRIGERATORS; 2) THE TOILET, SINK, AND SHOWER CONSTRUCTED ON THE LOWER LEVEL OF THE DOCK; AND 3) SEWER LINE.

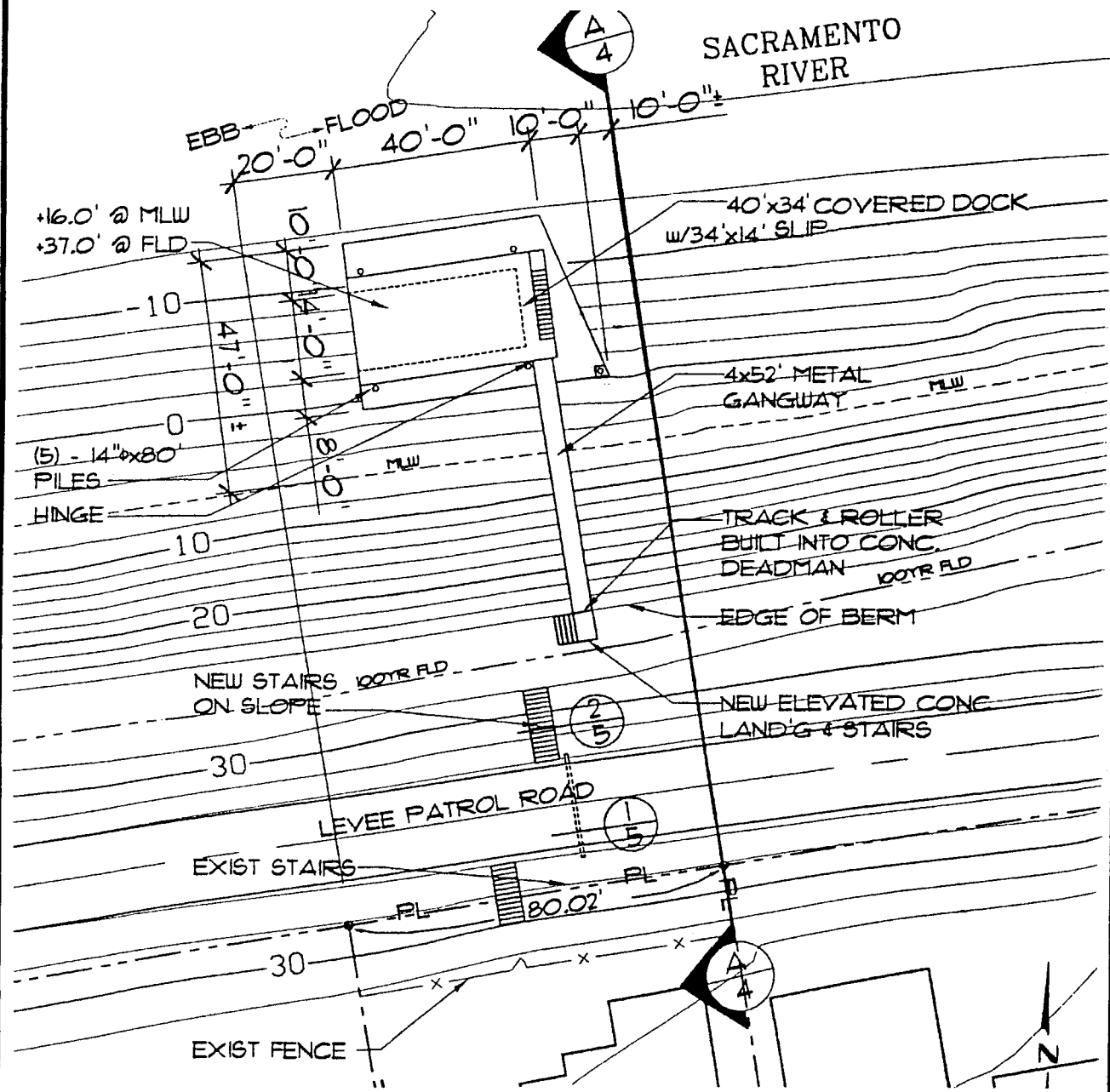
AUTHORIZATION:

- 1. STAFF IS AUTHORIZED TO 1) ISSUE A NOTICE OF DEFAULT TO ROBERT L. HULBERT DUE TO THE ABOVE RECITED DEFAULTS; AND 2) IF MR. HULBERT FAILS TO COMPLY WITH FINDINGS B, C, OR E TERMINATE LEASE NO. PRC 8513.1.

CALENDAR ITEM NO. 35 (CONT'D)

2. STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL ARE AUTHORIZED TO TAKE ALL APPROPRIATE STEPS, INCLUDING LITIGATION, TO ENFORCE THE COMMISSION'S FINDINGS INCLUDING, BUT NOT LIMITED TO, TERMINATE THE LEASE OF ROBERT L. HULBERT AND TO REMOVE ALL OF THE IMPROVEMENTS FROM THE LEASE PREMISES.
3. DENY THE APPLICATION SUBMITTED BY ROBERT L. HULBERT TO AMEND LEASE NO. PRC 8513.1, A GENERAL LEASE - RECREATIONAL USE.

Site Map



This exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by 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 other property.

EXHIBIT A
PRC 8513.1

Robert L. Hulbert
Sacramento County

LUCE FORWARD
ATTORNEYS AT LAW • FOUNDED 1873
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

EXHIBIT B
PRC 8513.1

121 Spear Street
Suite 200
San Francisco, CA 94105
415.356.4600
415.356.4610 fax
www.luce.com

GERALD M. MURPHY, PARTNER
DIRECT DIAL NUMBER 415.356.4689
DIRECT FAX NUMBER 415.356.3897
EMAIL ADDRESS gmurphy@luce.com

October 12, 2007

VIA FAX AND U.S. MAIL

Mary C. Hays
Public Land Manager
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Re: **File Ref: 8513.1**
Robert L. Hulbert
673 Brickyard Drive (Boathouse), Sacramento

Dear Ms. Hays:

This office represents Dr. Robert Hulbert in connection with the above referenced matter. This letter will respond to your letter of October 9, 2007.

Please be advised that we will be challenging the decision of the Commission in this matter by way of a writ petition to be filed in the Sacramento Superior Court. I am advised that a formal written decision has not been served on our client at this time, nor has the transcript from the hearing which he requested been delivered to him as of yet. The Commission advised him that each would take approximately 30 days to deliver, so he should be receiving it shortly. We cannot file our writ petition until we have had a chance to review both the transcript and the written findings of the Commission. The timing of our filing is controlled by the Code of Civil Procedure.

In the meantime, Dr. Hulbert will not be making the modifications that you requested nor will he be terminating the lease until the Superior Court has adjudicated the matter. He will be removing the toilet and barbecue facility temporarily pending the outcome of the Writ Petition.

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LUCE FORWARD

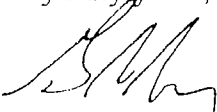
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Mary C. Hays
October 12, 2007
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Please direct all further correspondence to this office. Thank you for your anticipated cooperation.

Very truly yours,



Gerald M. Murphy
of
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

GMM/rjm

cc: James Frey, Esq.
Ms. Vicki Caldwell
Ms. Barbara Dugal
Dr. Robert L. Hulbert

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