

ATTACHMENT C

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**OFFICE OF THE CITY ATTORNEY
CITY OF SAN LUIS OBISPO
990 Palm Street, San Luis Obispo, CA 93401
(805) 781-7140
FAX (805) 781-7109**

FAX TRANSMITTAL FORM

DATE: 4/20/2016
TO: CalPERS Legal Office
Attn: Preet Kaur, Senior Staff Attorney
400 Q Street, Rm LPN 3340
Sacramento, CA 95811
Fax No. (916) 795-3659
FROM: Christine Dietrick, City Attorney

NO. PAGES (INCLUDING COVER): 2

COMMENTS:

SUPPORT FOR DESIGNATION OF BOARD DECISION IN THE PHILLIP D. MACFARLAND MATTER AS PRECEDENTIAL (OAH No. 2014060759)

**City Attorney's Office**

990 Palm Street, San Luis Obispo, CA 93401-3249
805.761.7140
www.ci.slo.ca.us

April 20, 2016

CalPERS Legal Office
Attn: Preet Kaur, Senior Staff Attorney
400 Q Street, Rm LPN 3340
Sacramento, CA 95811
Fax No. (916) 795-3659

Re: SUPPORT FOR DESIGNATION OF BOARD DECISION IN THE PHILLIP D. MACFARLAND MATTER AS PRECEDENTIAL (OAH No. 2014060759)

Dear Board Members:

I am writing as the City Attorney of Member Agency the City of San Luis Obispo to urge the Board to designate its November 18, 2015 decision in the above referenced matter as precedential.

Having reviewed the decision, I conclude that the decision reflects a clear, complete and important articulation of a significant legal determination with potentially broad application for any agency engaged in the often lengthy process of terminating a public employee for cause. Specifically, the Board's decision unequivocally establishes that an employee cannot preempt an otherwise valid, but incomplete, termination for cause process by filing a disability retirement application prior to the conclusion of the termination process.

As the Board is aware, the termination of a public employee is subject to considerable pre-termination notice and appeal requirements that can take months to complete. The Board's decision should be designated as precedential so that it is very clear to public employees who engage in terminable misconduct that separation for cause unrelated to the claimed disability at any time prior to a finding by CalPERS that there is an unconditional right to immediate payment of a disability retirement pension acts as an absolute bar to disability retirement. Such a clearly articulated standard, as reflected in the referenced case deters abuse and manipulation of public processes and avoids waste of public agency and CalPERS resources to oppose and review meritless disability retirement claims filed as pre-emptive strikes on valid terminations for cause.

As the legal representative of the City of San Luis Obispo, I thank the Board and the Hearing Officer for the well-reasoned, legally well-supported and clear decision in this case and I urge the precedential designation without reservation.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine Dietrick", written over a horizontal line.

Christine Dietrick
City Attorney
City of San Luis Obispo