



NEW BEDFORD
PORT AUTHORITY

123 MacArthur Drive TEL (508) 961-3000
New Bedford, MA 02740 FAX (508) 984-2640
WWW.PORTOFNEWBEDFORD.ORG

December 18, 2025

Jeffrey S. Shapiro
Inspector General
Commonwealth of Massachusetts
John W. McCormack State Office Building
One Ashburton Place, Room 1311
Boston, MA 02108

Re: Pope's Island Marina

Dear Inspector General Shapiro:

On November 18, 2025, the Massachusetts Office of Inspector General ("OIG") issued a report following a two-year investigation of the Pope's Island Marina. The marina has been managed by the New Bedford Port Authority ("NBPA") for more than thirty years under a series of operating agreements with the Massachusetts Department of Conservation and Recreation (DCR), which owns the marina's docks. The report alleges that neither the NBPA nor DCR could fully account for payments the NBPA was required to remit to DCR under the operating agreements from 1994 to 2015, that the NBPA failed to make timely repairs to the marina, and that DCR in general was "not a good steward of public assets."

The NBPA responds below that whatever the OIG's findings about DCR's management and financial practices, the OIG has unfairly painted the NBPA with the same brush. The OIG did not develop a working understanding of the NBPA's financial practices or its management of the marina because it failed to take basic investigative steps. It did not seek to interview any NBPA employees; it did not ask for essential financial records such as the NBPA's annual operating budgets or third-party audits; and it did not conduct a physical examination of the marina. It glossed over applicable laws that govern the retention of public records. There also is no indication that the report's findings rely on any witness statements except from the anonymous complainant (or complainants), whom the report does not identify. The report should not be accepted as an accurate portrayal of the New Bedford Port Authority or its management of the Pope's Island Marina.

The New Bedford Port Authority and Pope's Island Marina

In 1957, the Massachusetts legislature established the New Bedford Harbor Development Commission ("HDC"), which for the last decade has done business under the name "the New Bedford Port Authority", for the purpose of "making available to the persons engaged in commerce and industry the piers, wharves and other facilities of the commission at the lowest cost consistent with sound economy and prudent management." See Chapter 762 of the Acts of 1957. The enabling legislation authorized the Port Authority to lease municipally owned land on

the New Bedford waterfront and provide services to Port users and reinvest its revenue consistent with its economic development mission. As the agency responsible for the overall operation of the Port of New Bedford, the NBPA manages seventeen commercial waterfront lease properties, four parking lots, and six terminals and piers. It oversees port security and maritime safety operations for the tens of thousands of annual users of the port, which annually generates more than \$11 billion in economic output.

The NBPA also is responsible for planning the Port's development and managing the construction and renovation of publicly owned port facilities, as well as the remediation and dredging of the harbor. In the past decade, the NBPA has overseen or coordinated over \$1.2 billion of new investments in infrastructure, dredging, and remediation in the Port, representing the most extensive modernization of the Port in over a century. The NBPA also advocates for state and federal policies that support the interests of the Port's businesses, particularly the commercial fishing industry. On account of New Bedford's status as the highest grossing fishing port in America, the NBPA is widely recognized as a leading voice on federal fisheries policy.

The NBPA is managed by an Executive Director, who oversees a full-time staff of fifteen, including a chief financial officer, chief civil engineer and general counsel, and it is governed by a seven-member commission that is chaired by the Mayor. Most of the NBPA's revenue comes from fishing boat dockage fees, offloading fees, and revenue from parking facilities. The Port Authority receives no regular outlays from the City or state for its operations.

Among the NBPA's portfolio of facilities is the Pope's Island Marina, a 198-slip recreational marina located on the shoreline of a municipal park in the Inner Harbor. The marina is comprised of a boathouse building and adjacent parking lot, which are owned by the City, and a set of floating docks arrayed along a "T-head" as shown below.



In statutes enacted in 1987 and 1992, the legislature authorized funding to construct the marina's docks and lease them to the Port Authority (then the HDC) for a period of five years, which the HDC could renew for another five years. The purpose of the legislation was to augment the HDC's revenue so it could reduce its reliance on dockage fees from commercial

fishing vessels, expand recreational boating opportunities in the harbor, and draw visitors to the City who might patronize nearby businesses.

Once construction of the docks was completed in 1994, the HDC leased the docks from the Massachusetts Department of Environmental Management (“DEM”), and operated them, together with a city-owned building and parking lot, as a recreational marina. The lease provided that the HDC would maintain the marina, collect slip fees, and remit 15% of the marina’s gross annual revenue to DEM. Two thirds of that rent was to be placed in the inland waterways fund. HDC’s “net income” from the lease was to be used for “repairs to New Bedford Harbor, its piers, wharves or bulkheads....”

After the ten-year term of the original legislation lapsed, and absent any other legislative direction, the Department of Conservation & Recreation, which succeeded the Department of Environmental Management as the state agency responsible for leasing the waterside recreational facilities, entered into a series of successive agreements with the HDC to operate the marina, which continue to today. Some of the agreements incorporated services provided by the HDC at DCR’s other property in the harbor, the New Bedford State Pier. In the agreement dated December 15, 2006, which renewed every five years thereafter, the HDC was required to remit a flat fee of \$45,000. The fee was subject to increase if the HDC raised boat slip rates after obtaining DCR’s approval. In 2009, the last time slip rates were raised, the annual rent increased to \$47,655, where it has remained ever since.

The Benefits Conferred by the Pope’s Island Marina

The Pope’s Island Marina has been a resounding success. For at least the past decade, all 198 slips have been subscribed for the boating season, and today it has a waiting list of 101 boat owners. The marina is managed by a professional staff that emphasizes safety and customer service. Annual slip holder surveys reflect a strong consensus of satisfaction with the marina’s services and amenities.

In each of the past three years, the marina has been awarded “Elite Fleet” status by Marinas.com, the gold standard for marina performance, reflecting “marinas that went above and beyond to delight boaters.” The award is based on user reviews that focus on operational excellence, quality of amenities, and customer service. Only two other marinas in Massachusetts – a privately operated facility in Boston and one operated by the harbormaster in Marblehead – have achieved the award for three consecutive years.

Although only seven percent of the slip holders at the Pope’s Island Marina are New Bedford residents, the marina is an important economic asset to the Port and City. Eighty-seven percent of the marina’s slip holders are Massachusetts residents. The marina’s boaters support an array of small businesses, including grocers, liquor stores, marine supply shops, fuel suppliers, and boat yards. They dine in the city’s restaurants, patronize its retailers, and visit its tourist attractions. The Port Authority reinvests the net revenue from the marina into port management and economic development programs.

In a busy port like New Bedford, where most of the berthing is occupied by commercial vessels, the marina also affords the Port Authority additional capacity to address contingencies

for recreational boaters. During storm events, many recreational vessels seek refuge in New Bedford Harbor on account of its hurricane barrier. The Pope's Island Marina is the primary location where they tie up.

DCR's Unwillingness to Replace Its Own Docks

The agreements between the NBPA and DCR were typical operating agreements in that the operator, the NBPA, was expected to bear the full cost of operation, including ordinary maintenance, and in exchange it would retain the asset's revenue, less a remittance to the asset's owner, DCR. The agreements provided that the NBPA would "repair and/or replace improvements, equipment and materials as needed" and that the NBPA would turn over the marina "in good order and condition, ordinary wear and tear excepted." Throughout the marina's thirty-one year existence, the NBPA has been not only an effective operator of the marina's docks, but it has faithfully maintained them.

Not surprisingly, the agreements did not provide, nor did the parties ever contemplate, that the operator also would also be responsible for replacing the asset itself at the end of its useful life. Because recreational boating docks deteriorate quickly due to their exposure to wind, waves, and salt water, their useful life is relatively short compared to capital assets on land. Commercial dock manufacturers offer varying estimates of useful life, with current state-of-the-art systems typically expected to last in the range of thirty years, or longer in moderate environments. See, for example:

- [Kroeger Marine – It's Time to Replace your Dock](#)
- [Nautic Expo Concrete Docks](#)
- [Marina Dock Age Strategies for a Comprehensive Facility Condition Assessment](#)
- [Construction Products LLC Concrete Floating Docks](#)

However, in the case of the "light duty system" that DCR installed in the early 1990s using materials and installation techniques available at the time, it would surprise no one with expertise in the marine construction field that the docks were found in 2014 to have begun showing wear-- having been deployed since 1994 in the harsh weather and wave conditions of New Bedford Harbor. Equally unsurprising would be the determination of the 2020 inspection report that the docks had arrived at, or were near the end of, their useful lives after 26 years in such an adverse environment. Importantly, the 2020 inspection report specifically noted that DCR's decision in 1994 to opt for the light duty version of the floats made them "[the] more susceptible to damage and deterioration in extreme events"^[1].

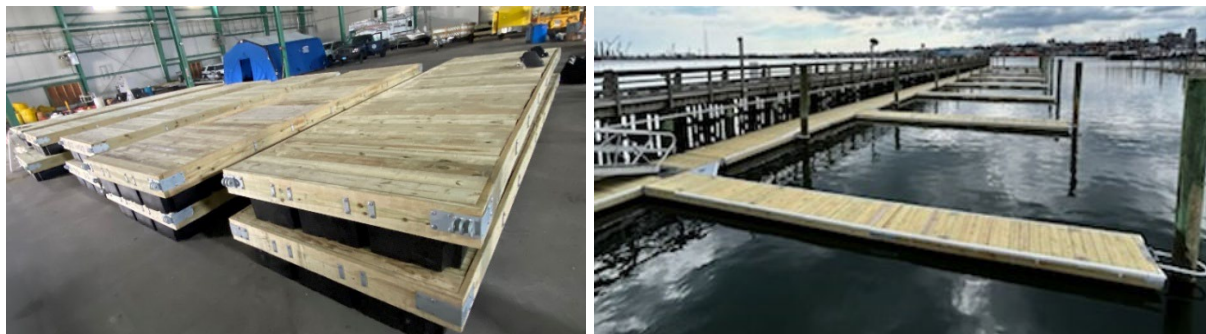
In 2012, it became clear based on the HDC's inspections, that the docks were nearing the end of their useful life. Unfortunately, DCR demonstrated little willingness to replace them. Rather than rely solely on internal assessments, the NBPA took the additional step of commissioning at its own expense an independent conditions survey in June 2013 to formally

^[1] According to the 2020 Pare Report Section 5.0, DCR installed a "light duty system" with concrete components only 1-inch to 1.5-inch thick, whereas industry standard for such float modules would require 3-inch reinforced concrete decks and 2-inch to 3-inch thick sides and bottoms.

validate their concerns. The resulting report in April 2014 made unmistakably clear that the docks required comprehensive replacement and that routine maintenance alone would no longer ensure their safe operations.

Despite the report's clarity, DCR still undertook no discernable effort to replace the docks. The NBPA in turn continued to voice its concerns to DCR that the docks had reached the end of their useful life and complained that DCR had no plan to replace them. To help the state secure funding for the replacement, the NBPA worked with Representative Antonio Cabral, who successfully included \$4.1 million in the 2014 Environmental Bond Bill for the project.

In the meantime, the NBPA was forced to rehabilitate the docks to a degree beyond that which was required by any fair reading of the operating agreements. Although the agreements obligated the NBPA to perform only ordinary maintenance, NBPA personnel began capital-level renovations. In the winter months marina personnel would fabricate new docks and install them in the spring. The photos below show recently constructed and installed replacement docks.



In 2020, still seeking a permanent solution, the NBPA reached out to DCR and offered to pay for a new conditions survey of the docks and asked DCR to participate in the selection of the engineering firm to perform the work. Together the NBPA and DCR chose Pare Corporation, the same firm that prepared the 2014 report. Pare's new report reaffirmed its original report, concluding that the docks were at or nearing the end of their useful life and needed to be replaced. The report also noted that NBPA's extraordinary efforts had been effective in delaying their day of reckoning:

"The 2014 inspection report indicated that replacement of the floating docks would likely be required in 3-5 years. Since then, several critical float modules have been replaced which has allowed the marina to extend the useful life of the system to keep the marina [in] operation."

Despite directly participating in the selection of the engineering firm and fully aware of its findings, DCR continued to ignore its obligation to replace the docks.

In 2021, growing more concerned that the state would never undertake the required capital improvements—and recognizing the marina’s role in supporting local small businesses, Mayor Jon Mitchell proposed a last-resort alternative to sustain the marina’s operation: that DCR transfer DCR’s ownership of the docks to the NBPA. Although taking on a fully depreciated asset like the docks would be an expensive proposition for the NBPA, the City had the opportunity then to invest funds from the American Rescue Plan Act into the facility and could otherwise pursue grant funding for which the NBPA had been ineligible because it did not own the docks. Because the docks, as opposed to the land underneath them, were not real property, their transfer did not require legislative approval, and DCR could dispose of them through the established administrative process for liquidating depreciated equipment.

In early 2023, the NBPA and City picked up the transfer discussion with the new Healey Administration, which signaled its initial agreement with the approach. The Administration’s position was formalized in October 2023, when DCR notified the NBPA that the Commonwealth would proceed with the transfer and advised the NBPA to file a Chapter 91 application to begin the process. In a March 12, 2024 conference call, however, the administration informed the NBPA and the City that it changed its mind. Instead of transferring the docks, it would undertake a “Five-Point Plan” for the reconstruction of the docks, which would entail a transfer of ownership of the docks to the Division of Capital Asset Management and Maintenance (“DCAMM”) in an effort to secure the funding necessary to rebuild them. See Letter from Mayor Mitchell to Secretary Tepper, dated May 3, 2024, attached as Exhibit #1. This change in approach caught the NBPA and City by surprise, and it appeared to be prompted by a proposal by now former Representative William Straus, whose district did not include Pope’s Island, which called for the state’s continued ownership of the docks. See Exhibit 2.

In June 2024, Representative Chris Hendricks, whose district includes Pope’s Island, sponsored an amendment (#477) to the economic development bill then pending in the House of Representatives (H4789), that attempted to dictate the specific terms of any future lease at the marina between the state and the NBPA. See Amendment #477, attached as Exhibit #3. Neither the Healey Administration or the NBPA, the two parties to the possible lease, were consulted by legislators about the terms of the amendment before it was filed. See Letter from Mayor Mitchell to Rebecca Tepper, dated July 2, 2024, attached as Exhibit #4. The amendment, which ultimately was enacted without material changes,¹ imposed caps on slip fees, arbitrary spending limitations, and an unrealistic lease term. See Amendment #477. In the event that the parties did not enter into a lease, the amendment directed the state to issue a request for proposals for a lessee to operate and maintain the marina. Id. The NBPA notified the state that the Port Authority would not lease the docks under the unfeasible terms of the amendment. Instead, it

¹ See Section 296 of Chapter 238 of the Acts of 2024.

would be willing to continue its operation of the marina until a state or private entity took over, so as to avoid disruption to the marina's users. See Letter from Mayor Mitchell, dated July 2, 2024 (Exhibit #4), and letter from Gordon Carr to Assistant Secretary Cooper dated November 7, 2024, attached hereto as Exhibit #5. Toward that end, the NBPA operated the marina for the 2025 season under a one-year license, and it recently agreed to an extension to cover the 2026 season.

In accordance with Amendment #477, as enacted, DCR issued a request for proposals (RFP # DCR 2025-100) for the operation of the "marina." The RFP clarifies that the property to be leased does not include the marina building, which is owned by the NBPA, and the parking lot, which is owned by the City and operated by the Port Authority. Responses to the RFP are due on January 9, 2026.

The OIG Investigation

On December 13, 2023, the NBPA received a request for documents from the Massachusetts Office of Inspector General, for the following records for the period of January 1, 1992 to the present:

1. Copies of the lease or any other writing memorializing an agreement for the payment of rent, including but not limited to Memoranda of Agreements, for Pope's Island Marina, between you (and your predecessors) and DCR (and its predecessor).
2. All records of payments made from New Bedford Port Authority (and its predecessor New Bedford Harbor Development Commission [HDC]) to DCR (and its predecessor the Department of Environmental Management) related to Pope's Island Marina.
3. Communications from DCR to New Bedford Port Authority (and its predecessor HDC) regarding any rental arrearages and agreements.

The NBPA responded to the OIG request on January 19, 2024, producing all responsive records in its possession. The NBPA did not hear from the OIG again for nearly two years, when on October 30, 2025 it asked for information about a bank account in the name of the NBPA, which was closed at least fifteen years ago. The NBPA received the OIG's report on its investigation two weeks later. In its two-year investigation, the OIG did not interview any current NBPA employees, never conducted a site-visit or otherwise examined the marina's docks, and never sought basic financial documents such as the NBPA's annual audits, operating or capital budgets, or profit and loss statements.

The OIG report explains that the OIG received a complaint on August 1, 2023 that the NBPA was not making payments to DCR, as well as "additional complaints about the Pope's Island Marina lease and management in 2023 and 2024." These complaints "included concerns that DCR and the NBPA did not sign a lease as required by Chapter 382; that the NBPA was not

providing DCR with financial records related to the marina;² and that the Commonwealth would transfer the marina to the City of New Bedford without following the two-thirds roll call vote requirement of Article 97 of the Amendments to the Massachusetts Constitution.”

The report does not indicate whether the complaints were lodged by more than one individual, much less identify the complainant(s). Nevertheless, the allegations closely track those made by former State Representative William Straus in the same period both verbally to DCR and in a letter to Rebecca Tepper, Secretary of Energy and Environmental Affairs, dated October 30, 2023 (attached as Exhibit #2). Straus’s letter expresses frustration that [f]ollowing a series of meetings, calls and communications over the last few months with you, as well as the Commissioner and Undersecretary,” the state intended to move forward with a disposition of the marina to the city. The OIG report does not indicate whether the OIG interviewed any witnesses other than the unidentified complainant(s).

The OIG report sets forth ten “findings,” which pertain to the record keeping practices of the NBPA, DCR or both, the NBPA’s maintenance of the marina, and DCR’s capacity generally to steward public facilities. It also makes recommendations to the parties about their financial practices.

The OIG Report’s Findings

The NBPA did not have an opportunity to review, much less respond to the report’s findings before the OIG made them available to the media. Nor in the thirty-day period in which the OIG requires a response does the NBPA have a full opportunity to develop comprehensive answers to the allegations, as some of them relate to conduct over thirty years ago and involved individuals who are no longer employed by the NBPA. Nevertheless, it is apparent on the face of the report that the OIG failed to establish a basic understanding of the marina’s operations, neglected to consider the limitations the NBPA’s legal obligations to retain its financial records, and made inferences that are not supported by the evidence it cites.

The Port Authority responds below to the findings that pertain to the NBPA.

Finding 1: “Neither DCR nor the NBPA could produce a signed lease.”

The OIG alleges that DCR and the NBPA “did not follow the Legislature’s directive to use a lease to memorialize the terms for the NBPA to operate and maintain the marina.” The “Legislative directive” refers to the statute that established the management arrangement for the marina, Section 1 of the Chapter 382 of the Acts of 1992. The act provided that the Department of Environmental Management (“DEM”, the predecessor of DCR) “is hereby authorized and directed *to lease* to the New Bedford harbor development commission (sic) a certain area of land in and over the waters of the Acushnet river (sic) in the city of New Bedford” for the purpose of operating a marina (emphasis added). The DEM and the HDC negotiated a lease and incorporated it into a special permit for the use of the land and docks. The OIG contends that

² The NBPA has complied with all requirements of the agreements between the NBPA and DCR and responded to any request for documentation associated with those agreements.

because the lease was not signed, the parties failed to follow the Legislature’s directive “to lease” the property.

To fully understand the circumstances surrounding the issuance of the permit, interviews of former HDC and DEM employees who were involved in the matter in 1994 would be essential. There is no indication in the report, however, that the OIG conducted any such interviews. The OIG relies instead on correspondence between the parties between May 1992 to May 1993 that was produced by the NBPA. The correspondence reflects arms-length lease negotiations between the parties, including the exchange of draft leases, that ultimately led to a meeting of the minds. Contrary to the OIG’s assertion that no lease arrangement was established, the special permit issued by DEM expressly incorporated the lease by reference, and both parties signed the special permit. (Attached hereto as Exhibit #6). In the correspondence, neither party suggests that the conditions of the permit, as set forth in the attached lease, might not be enforceable.

The OIG is thus incorrect to conclude that the parties failed to satisfy the legislative directive “to lease” the property.³ Accusing the parties of violating a state law – some thirty-one years ago – because they failed to observe the formality of affixing their signatures to an otherwise enforceable lease is an extreme instance of exalting form over substance.⁴

Finding 2: “For the years 1994 through 2006, neither DCR nor the NBPA could produce evidence of the NBPA’s annual rent payments under the special use permits or the First MOA.”

The OIG alleges that DCR and the NBPA failed to “produce evidence of the NBPA’s annual rent payments” from 1994-2006. To be clear, the OIG issued a document request that sought “records of payments”, and the NBPA in turn produced the responsive records in its possession. Contrary to the OIG’s characterization of its own request, it did not ask for *evidence* of payment, a broader term that would have encompassed witness testimony. At no point did the OIG ask to speak to NBPA employees.

The more significant flaw in this finding is that the OIG failed to explain why the NBPA would be required to retain records that were up to thirty years old. The state’s document retention laws are contained in Massachusetts General Laws Ch. 4, § 7(26), c. 30 § 42, and c. 66, §§ 1, 8 and 9. These statutes define what are public records and G.L. Ch 66, § 8 sets forth the obligations of public agencies to retain documents:

“every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, public ways, sewers or other

³ We also note that in any case, accusing the NBPA that it violated state law in the way it entered a lease, when the counterparty was a state agency and the subject of the lease was state property, is effectively a declaration of guilt by association. If the state made a mistake about how its land may be used, responsibility should lie with the state, not the party using the property.

⁴ It is also worth noting that in widely publicized inquiries by the legislature in 2010 and the State Auditor in 2012, DCR was alleged to have mismanaged the lease arrangements at certain of its marinas. In neither instance was the Pope’s Island Marina implicated. See Chapter 65 of the Acts of 2010, and DCR (No. 2012-0276-3S).

state, county or municipal interests not required to be recorded in a book and not so recorded, shall be preserved and safely kept; and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law or unless such records are included in disposal schedules approved by the records conservation board for state records or by the supervisor of public records for county, city, or town records.”

The Secretary of the Commonwealth provides guidance to public agencies about records retention, including the Municipal Records Retention Schedule.⁵ The Schedule makes clear that payment records such as those requested by the OIG need only be kept “until completion of satisfactory audit” and after that, the documents relied on for the audit need only be kept for seven years. The NBPA, as a public entity, is audited annually.

The records at issue here according to the OIG, range in age from 10 to 32 years old, well outside the required retention period. None of the agreements between the NBPA and DCR extend the duration of these obligations. The OIG should explain why it would be a prudent business practice to preserve decades-old records, when the law does not require it.

Finding 3: For the years 2007 through 2015, neither DCR nor the NBPA could produce evidence of the NBPA’s annual rent payments under the Second MOA.

Finding 3 makes similar assertions about the NBPA’s retention of records that were generated outside the period that state law required them to be retained.

Finding 4: DCR could not produce records of slip fees that should have been used to calculate annual rents under the Second MOA.

The OIG found that DCR failed to collect records of slip fees for the years 2017 to 2024. While the NBPA offers no comment about whether DCR was required to receive and retain such records, the NBPA kept those records. For whatever reason, the OIG did not request them. Having not asked for, much less reviewed those slip fee records, the OIG still saw fit to admonish the NBPA about the need to keep such records, directing the NBPA to “document the slip fees charged for the remainder of the contract period.” See OIG Report, Footnote 14. This oversight is yet another example of the OIG’s wrongfully ascribing what it believes are DCR’s shortcomings to the NBPA.

Finding 5: DCR did not have controls to ensure that the NBPA paid the correct amounts in annual rent and did not have a reconciliation process to account for missing or inaccurate payments.

Finding 5 pertains entirely to DCR’s internal processes.

Finding 6: The rent the NBPA has paid annually since 2016 is less than the amount it paid in 2000.

⁵ https://www.sec.state.ma.us/divisions/archives/download/Municipal_Retention_Schedule_20240715.pdf

Although Finding 6 concerns DCR's internal controls, the report implies that the NBPA secured an unfair windfall from its operation of the marina, a suggestion made more explicitly by the OIG's press release that the public was "likely shortchanged." This could not be further from the truth. Had the OIG asked for the marina's slip payment records or interviewed NBPA employees, it would have learned that the NBPA has held the marina's annual slip fees constant since 2009. At \$90 per linear foot, the slip rate is more than 50% below the prevailing market rate in the region.

Both the NBPA and DCR believed that a lower rate would keep the marina affordable and fairly reflect the fact that the docks were older than their expected useful life. As operating costs increased while slip fees were held constant, DCR understood that in fairness the NBPA's annual remittance likewise should be held constant.

Finding 7: DCR and the NBPA have not accounted for \$190,000 in capital repair funds.

The OIG asserts that the HDC/NBPA was required to pay "capital repair funds" to DEM/DCR in installments totaling \$190,000 in the years from 1997 to 2003, and that the records produced to the OIG reflect payments of only \$110,000. The OIG insists in effect that because the NBPA did not retain twenty-five-year-old bank records, NBPA failed in its obligation to account for those payments.

This finding suffers from the same oversight as Findings 2 and 3, which is, the records were older than that which a public agency was required to retain. If the OIG believes that public entities should retain records longer than state law requires, it should say so and explain why it would be a sound business practice.

Finding 8: The NBPA failed to make timely marina repairs as required under the special use permits and MOAs.

The OIG claims that the NBPA did not properly maintain the marina's docks. The sole basis for its conclusion is that, according to DCR, "none of the recommended repairs from the July 2020 updated inspection report have been completed." The OIG arrived at its conclusion about the condition of the docks without having inspected them. Nor did it interview anyone from the NBPA to understand how they are maintained, why the NBPA commissioned the engineering surveys, or what work the NBPA did perform to keep the marina running. Instead of taking these obvious steps, the OIG simply accepted the word of DCR, the same state agency it roundly criticizes throughout the report.

The OIG's discussion of the marina maintenance is misleading on several levels. First, it misconstrues the memorandum of agreement between the NBPA and DCR. The MOA was a typical operating agreement, in that it required the NBPA to make ordinary repairs to the asset to be operated, but not to replace the entire asset at the end of its useful life. The OIG report missed this distinction or chose to gloss over it. The report reasoned that because the docks needed to be replaced, the NBPA must not have made timely repairs. The OIG's analysis fails to acknowledge a basic tenet of capital asset management; that is, regardless of the fidelity by which the operator of a physical asset performs routine maintenance, eventually the repairs become prohibitively

expensive, such that the entire asset must be rebuilt or replaced. Faithfully changing the oil and rotating the tires only delays the inevitable day when a car breaks down. So it is with other physical assets, including marina docks.

Second, had the OIG taken basic investigative steps, it would have learned that the NBPA fulfilled its obligation to conduct routine maintenance. For instance, had the OIG inspected the marina during the boating season, it would have observed NBPA employees performing a variety of maintenance tasks on the docks. Had it asked for maintenance records, it would have discovered that this work was routinely done. Had it interviewed slip holders or asked about the marina's occupancy rate or the long waiting list for slips, it would have occurred to the OIG that the marina's customers were satisfied with the work.

Third, as the marina neared the end of its useful life, the NBPA began to make *capital* repairs to the docks, which was supposed to be DCR's job. During the winter months for the past decade, NBPA employees have constructed and installed new finger piers to replace those that were past their useful life. More recently, the NBPA used insurance proceeds and its own labor to build \$1.2 million worth of new docks to replace those that were heavily damaged by storms. As of the end of the most recent boating season, the NBPA has replaced 57 of the 104 original concrete finger floats with timber floats. It is also worth noting that the NBPA also made \$500,000 in renovations to modernize the marina building. Together, these and other initiatives reflect not the neglectful operator as portrayed by the OIG, but a port agency that has done everything it could to keep the marina going, despite the state's failure to pull its own weight.

Fourth, the OIG holds up the 2020 engineering report as though it were a smoking gun that proved that the NBPA failed to take care of the docks, when in fact the NBPA's purpose in commissioning the report was to demonstrate to DCR that the docks were well past the end of their useful life, and NBPA's repair efforts could not be expected to perpetually forestall the replacement of the entire asset. The NBPA had been making this case for a decade, and it commissioned the first conditions survey in 2014 in the hope that DCR would recognize the need for a full asset replacement. The report validated the NBPA's concerns, noting that "deteriorating condition of the float modules is such that replacement of the floating docks will be required in three (3) to five (5) years." Yet the state still did not move forward with funding.

In 2020, the NBPA tried again to persuade DCR of the necessity of replacement, this time by enlisting DCR in the selection of the engineer to conduct the survey, which again turned out to be Pare Engineering. Not surprisingly, Pare recommended that "the entire marina float system be replaced." The report also noted that the extra efforts of the NBPA have kept the marina going: "The 2014 inspection report indicated that replacement of the floating docks would likely be required in 3-5 years. Since then, several critical float modules have been replaced which has allowed the marina to extend the useful life of the system to keep the marina [in] operation." DCR did not dispute these findings, or that the state was responsible for replacing the docks at the end of their useful life.

The OIG is correct that DCR should have undertaken the capital replacement of the docks long ago. But it could not be more wrong in concluding that the NBPA was not properly

maintaining the docks. We do not presume to know the OIG's motivations for painting the NBPA with the same brush as DCR, but the evidence does not justify it.

Finding 9: The NBPA has not demonstrated that it has the resources to properly maintain Pope's Island Marina.

In Finding 9, the OIG again conflates the obligations of the operator of an asset to perform ordinary maintenance with the obligation of its owner to replace the entire asset at the end of its expected useful life. The OIG loosely uses the term "repairs" to include wholesale replacement of the asset. Neither DCR, nor the legislature nor the NBPA ever contemplated that the replacement of the docks at the end of their useful life was the obligation of the NBPA. As explained above, the NBPA has demonstrated that it has the resources to properly maintain the marina, and in fact has done so. The OIG is correct that the Port Authority does not have the financial capacity to finance the replacement of the docks, but that was never its job.

Finding 10: DCR has not demonstrated that it is a good steward of public assets.

This finding is a general criticism of DCR and the inadequate resources it has to execute its mission. We leave it to DCR to respond. The finding goes on to prescribe conditions for the NBPA's future operation of the marina in light of recent legislation setting the terms of such future operation. In Mayor Mitchell's letter to Secretary Tepper (Exhibit #1), the Mayor explained that NBPA has no intention to operate the marina under the terms imposed by the legislature, which would have the effect of increasing its reliance on dockage fees from the fishing industry. As the marina's docks belong to the state, the state is free to operate the docks itself or enter into an operating agreement with a private entity.

The OIG's "Conclusions and Recommendations"

In its "Conclusions and Recommendations" section, the OIG bootstraps its flawed findings into the following sweeping conclusions:

"The NBPA's poor financial recordkeeping related to its operation and maintenance of Pope's Island Marina prevents the OIG from determining whether the NBPA is current in its financial obligations to DCR."

"Further, in all likelihood, the NBPA owes rent money to DCR, but as this letter makes clear that amount cannot be determined."

The casual reader of the OIG's report might miss that these conclusions omit dates. It bears emphasizing that they are based on documents that were generated from ten to thirty-two years ago, a range that beyond which the NBPA was required to retain them. While none of the NBPA's employees from that period remain on staff today, the NBPA has no reason to believe that appropriate and timely payments were not made to DCR, that the NBPA failed to generate records of such payments in the ordinary course of business, and or failed to retain them consistently with Massachusetts law. The OIG cites no evidence to the contrary. It simply supposes that because a full set of records no longer exists, it is possible that the required payments were not made. This is akin to saying that if a person cannot produce his grocery bills from twenty years ago, the possibility that he was shoplifting food cannot be ruled out.

The report takes this supposition a step further by implying in its recommendations to the NBPA that whatever was going on thirty years ago must still be going on today. The recommendations propose several changes to the NBPA's *current* financial practices, even though there is no discussion in the report about records generated by the NBPA or its financial practices after 2015. The only records sought and reviewed by the OIG after 2015, were payments records, and evidently the OIG had no problem with what it found, otherwise it would have said so. Because the OIG failed to ask for basic financial information such as the annual third-party audits or talk to the NBPA's chief financial officer, the OIG has no idea what the NBPA's current financial practices are. The report's recommendations about them are predictably generic, such as that NBPA should ensure that contracts are "memorialized in writing" and develop "best practices and controls for record keeping."

Had the OIG taken basic investigative steps, it would have learned that the NBPA has financial controls in place that are in keeping with modern accounting standards and state law. It would have found out that the NBPA's chief financial officer maintains strict financial oversight practices. It would have discovered that the NBPA is subject to an annual third-party audit, which has consistently found no significant deficiencies in the NBPA's financial management. It would have appreciated that the NBPA is not a harbor master of a suburban sailing locale, but an agency that oversees a port that is the largest commercial fishing port in the United States, the country's leading offshore wind port, and one of only two full service industrial ports in Massachusetts.

Finally, the OIG doubles down by declaring that "given the NBPA's inability to keep basic financial records and its failure to maintain the property as required by its agreements with DCR, the OIG stands in strong opposition to the NBPA's proposal that DCR transfer ownership of Pope's Island Marina, either in whole or in part, to the NBPA."⁶ This statement is flawed in several respects. First, for the reasons set forth above, the OIG's assertions about the NBPA's record keeping and maintenance practices are baseless. Second, the statement betrays a lack of familiarity with the NBPA, an agency that manages hundreds of millions of dollars of port assets. The statement suggests that the OIG is straining for a basis to assert its relevance in the disposition of a state asset.

Third, and more importantly, the statement lays bare that the OIG's does not have a full understanding of the NBPA's mission and how the operation of the marina might serve that mission. The NBPA did not propose to take ownership of the marina to secure a windfall. Quite to the contrary, a deteriorating facility that is now past its useful life would be a burden to the NBPA. It is a fully depreciated asset whose book value now is close to zero. We at the NBPA believe, however, that we have an obligation to the marina's various stakeholders to do everything within reason to sustain its operation. After over a decade of trying to convince DCR to replace the docks, we have been unsuccessful. Because DCR was not about to run the marina, and no legitimate private operator would come in without a major state capital investment, we expressed our willingness to take on the burden. If we did not step up, we believe the facility

⁶ Here and elsewhere in the report, the OIG is over-inclusive in its use of the term "marina". The Pope's Island Marina is a facility comprised of docks, a building and a parking lot. Only the docks are owned by the state.

eventually would become unusable. If the OIG has a better idea about how to sustain the facility, we would love to hear it.

Conclusion

In the course of its two-year investigation, the OIG sought to interview neither the NBPA's Executive Director, CFO, its General Counsel, the manager of the Pope's Island Marina, nor any other NBPA employee. It did not request copies of the NBPA's foundational financial records, such as its audit reports, annual budgets, or profit and loss statements. There is no indication in the report that OIG officials ever set foot in New Bedford to examine the marina. Had it done any of this homework on the NBPA, it would appreciate just how misplaced and pedantic are the report's formal recommendations.

As financial investigations go, this was not a serious effort. Yet, two years into it, the OIG felt compelled to abruptly publish an incomplete product coincidentally with the release of DCR's pending request for proposals for the operation of the marina. In one sense, we can appreciate why the OIG would use this report as an opportunity to take DCR to task on festering management issues. The agency has a checkered history in managing state assets over several gubernatorial administrations, and a chronic lack of investment from the legislature. As this response makes plain, we have been extremely frustrated in our dealings with the agency. But the OIG had no basis to accuse the NBPA likewise of shirking its responsibilities. The unjustified reputational damage to the Port does a disservice to the residents and businesses that rely on it.

Sincerely,



Gordon M. Carr
Executive Director

cc (via email):

Gov. Kim Driscoll, Lieutenant Governor

Kate Cook, Chief of Staff, Office of the Governor

Rebecca Tepper, Secretary, EOEEA

Commissioner Nicole LaChapelle

Jonathan F. Mitchell, Mayor, City of New Bedford

William McNamara, Comptroller of the Commonwealth

Senate President Karen Spilka

Speaker of the House Ronald Mariano

Senator Mark Montigny

Representative Antonio Cabral

Representative Christopher Hendricks

Representative Christopher Markey

Representative Steven Ouellette

Representative Mark Sylvia

Peter Mulcahy, Esq., General Counsel, EEA, Robert Fitzgerald, Esq., General Counsel, DCR

Eugenia M. Carris, Esq., General Counsel, OIG George Xenakis, Director, Audit, Oversight and Investigations Division, OIG, Nataliya Urciuoli, Senior Executive Assistant, OIG

EXHIBIT 1



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

May 3, 2024

Rebecca L. Tepper
Secretary of Energy and Environmental Affairs
Commonwealth of Massachusetts
100 Cambridge Street, Suite 900
Boston, MA 02115

Re: Pope's Island Marina

Dear Secretary Tepper:

Thank you again for convening the remote meeting this past Monday to discuss the future of the Pope's Island Marina. After years of the Commonwealth's avoiding its responsibility to replace the marina's state-owned docks, the Healey Administration's willingness to address the situation comes as a breath of fresh air. I agree with your observation that everyone would like the marina to offer a safe and affordable recreational boating experience for its users for the foreseeable future, regardless of who owns or operates the docks. The purpose of this letter is to offer additional input about how to make that happen.

For over a decade, the marina's current operator, the New Bedford Port Authority, has repeatedly voiced its concern to the Department of Conservation and Recreation that the docks needed to be replaced. At its own expense, the Port Authority commissioned independent engineering studies of the docks in 2014, and again in 2020, that concluded that the docks were past their projected useful life and that routine maintenance and repair eventually would be insufficient to sustain their operation. The docks had a projected useful life of approximately 20-25 years, and they are now over thirty years old.

Despite these findings, DCR remained unwilling to address the problem. This prompted the Port Authority in 2021 to propose an alternate arrangement in which the Commonwealth would transfer ownership to the Port Authority. Even though accepting ownership of such a deeply depreciated asset would be a costly undertaking, the Port Authority believed it would be the only realistic way to sustain the operation of the marina. On October 12, 2023, DCR notified us that the Commonwealth decided to proceed with the transfer and explained that the Port Authority should file a Chapter 91 application to begin the process.

This past February, as the Port Authority was finishing up its Chapter 91 application, your office invited us to participate in a Zoom meeting with your team and the governor's office

to discuss the marina, which was held on March 12. During this meeting, your team informed us that it wished to proceed instead with a ‘five-point’ plan for the reconstruction of the docks, which would entail the Commonwealth’s retention of ownership and the pursuit of funding from the legislature to pay for the project.¹ The shift in the Commonwealth’s position left us with questions about how the new arrangement would enable the marina to serve its intended purpose.

This week’s meeting began to clarify the Commonwealth’s intentions, including its decision to use capital funds to underwrite the project and the assignment of responsibility for the docks to the Division of Capital Asset Management. Although we did not request any funding, we are grateful for the Commonwealth’s willingness to invest in the Port. The Port Authority remains open to continuing to serve as the marina’s operator under DCAM’s ownership, so long as it is consistent with the port’s interests. But even if the marina ultimately is operated by a state agency or a private business, the Port Authority and City will work cooperatively with that entity to promote the marina’s success.

As was discussed, it will take at least two more years before the reconstructed docks would be available for use. In the meantime, the boating season is about to start in earnest, and the Port Authority will continue to bear the expense of repairing the existing docks. As the 2020 engineering report made clear, however, the docks can be repaired only so much at this point. If any section of the facility is beyond repair and presents a safety hazard to marina users or employees, the Port Authority may be forced to close it off. This already happened to a small section of the facility last year, which the Port Authority is rebuilding.

Because of the uncertainty over the long-term operability of the existing docks, we believe it would be important for DCAM to visit the facility so that it can observe the conditions firsthand. Because the current operating agreement between the Port Authority and the Commonwealth expires next year, it will be in DCAM’s interest to gain a clear understanding of the docks’ needs now in case one or both of the parties decides not to extend the agreement. This will enable DCAM to give ample notice to the marina’s users of any change in the operator.

¹ After this week’s remote meeting, Representative William Straus forwarded to my office an email he sent before the meeting to you and the other participants on the call that outlines a proposal for the docks that is similar to the one you outlined to us. The email asserts that there “has been an historic lack of documentation I believe between the monies in terms of monies (sic) collected and where they may have been applied by the city,” and that “the City seems to have been a less than adequate steward of this important Commonwealth asset.” This was the first time we heard such allegations, and as pointed as they are, the representative offers no evidence to support them. Although we have no idea what he is referring to, it should be enough to point out that the marina’s operating agreement requires the Port Authority to pay \$47,655.00 annually to DCR, an obligation which the Port Authority faithfully has discharged. The marina is fully subscribed and has a waiting list, and according to user surveys, it consistently receives high marks for its service. The Port Authority – whose finances are subject to an annual third-party audit – has achieved this operational success despite having to bear the increasing cost of dock repairs. If your office were inclined to credit the representative’s insinuations in its decision about the future of the docks, we would be pleased to offer far more detail about the Port Authority’s stewardship of the facility.

We appreciate the Healey Administration's willingness to address what has been a long-standing challenge. We look forward to further discussions about how the facility may serve its intended purpose for years to come.

Sincerely,



Jon Mitchell

cc: Senator Mark Montigny
Representative Antonio Cabral
Representative Christopher Hendricks
Representative Christopher Markey
Representative Paul Schmid
Representative William Straus
Gordon Carr, Executive Director, New Bedford Port Authority
Commissioners of the New Bedford Port Authority
New Bedford City Council President Naomi Carney

EXHIBIT 2

To: Rebecca Tepper, Secretary EEA

Cc: Kate Cook, Chief of Staff, Office of the Governor
Stephanie Cooper, Undersecretary EEA
Brian Arrigo, Commissioner DCR

From: William^{MS} Straus, Representative, 10th Bristol

Re: Pope's Island Marina-Port of New Bedford

Date: October 30, 2023

Introduction.

Thank you again for your time in reviewing this issue about the Pope's Island Marina. The marina is a significant public asset of the Commonwealth enjoyed by thousands of residents whose recreational interests are central to DCR's core mission. Similar DCR boating opportunities for the public are supported, as examples, at the Charles River Basin, Quabbin Reservoir Boat Launch areas, and at the Boston Harbor Islands to name a few.

Following on a series of meetings, calls and communications over the last few months with you as well as the Commissioner and the Undersecretary, I am sharing this memo to express my continuing concern about any intended disposition of the marina to the City of New Bedford.

For the reasons reviewed below and in the attachments, I believe that the administration is required under Article 97 to file legislation in order to obtain authorization for any transfer of its interests in the existing Pope's Island Marina which is currently owned and licensed to DCR.

I thank you in advance for your consideration.

Background.

As you recall, I met with you and your staff in your offices in September of this year to express my concern about the renewed efforts by the City of New Bedford to obtain from DCR some version of enhanced control and/or ownership over the Pope's Island Marina.¹ I provided you with copies of the statutory history involving the state's original funding and construction of the Pope's Island marina. I believe that these source documents still support my conclusion that any steps by DCR to transfer control of the marina would require legislative approval by the General Court in compliance with Article 97 of the state Constitution; my conclusions are

¹ It's little wonder that the city has been pursuing this issue with DCR for several years. By the city's own account in an undated memo submitted to the prior Administration, the city Port Authority acknowledged that the marina generates for city use an annual net income of \$275,000; that earlier city written submission is attached as #1.

supported by several statutes specific to the marina itself AND G.L. c. 132A and G.L. c. 30B, Section 12(c)(5)—the so-called automatic renewal ban.

I had previous to our meeting, met, spoke and corresponded with the Commissioner about this matter during the months of July and August.

On October 17 I was part of a conference call with the Commissioner and Undersecretary Cooper following the department's review of my concerns. I was informed by them that my legal and policy concerns about the city request and the need for legislative approval had been rejected by EEA; drafting of some agreement (the nature of which remains unclear to me) would now be undertaken by DCR with the city. I immediately expressed my thoughts in opposition to that position and made clear to them that I would continue my advocacy for agency compliance with the law and state constitution.

I requested and later received the "legal analysis" document that was apparently relied upon by the Undersecretary and Commissioner in support of their conclusion that the Legislature has no role in the disposition of the marina to the City of New Bedford. That "legal analysis" is not on letterhead, has no identified author, and is undated. It is Attachment #2 to this Memorandum.

A somewhat more detailed legal analysis by Counsel for the House of Representatives is Attachment #3. House Counsel expresses the view that Article 97 compliance is required for transfer of an interest in the Pope's Island Marina from DCR.

This memorandum and attachments reflect my continued assertion that EEA is pursuing a path which is outside the boundaries of your legal and constitutional authority (apart from the serious policy considerations that need to be evaluated about deciding to give away a multi-million dollar asset of the Commonwealth to a municipality which has demonstrated a questionable record of maintaining its existing harbor assets).

I hope you will reconsider your position.

Discussion.

A. Creation of Pope's Island Marina.

As succinctly summarized by the city itself in Attachment #1:

In 1993, the Massachusetts legislature passed legislation creating Pope's Island Marina by which the Commonwealth of Massachusetts, through what is now known as the Department of Conservation and Recreation (DCR), invested title to the infrastructure (the marina slips) in the DCR and the Harbor Development Commission [now doing business as the New Bedford Port Authority] retained ownership of the parking lot and Pope's Island Marina building.

The legislative history is well detailed and described in Attachment #3, from the House Counsel. Important to remember on this history is that in 1993 the legislature found Article 97 applies to this property and complied with the article in creating the marina facility by also authorizing limited terms for a 5 year lease and "an" extension of an additional 5 years to the city's Harbor Development Commission. As noted by House Counsel the record is unclear whether a lease, as approved by a 2/3 roll-call vote, was ever executed but the record does include a purported Memorandum of Agreement between the City and the HDC which House Counsel finds is of questionable legality and certainly requires a renewed analysis by EEA in my view. The 2006 executed MOA is Attachment #4.

Another legal deficiency which I believe may exist with the 2006 MOA by DCR and the City is its use of an "automatic renewal" clause. This is a serious question since it appears to be a key reason in the EEA "legal analysis" provided in Attachment #2. The fifth bullet point in that document asserts that the 2006 MOA "remains in effect today due to auto-renewal". This is a questionable conclusion in my view given that such automatic renewals are frowned upon. On this point please see the attached excerpt from the June 2010 Procurement Bulletin (Volume 16, Issue 2) of the state's Inspector General. Attachment #5. In the IG's view auto renewal provisions under the state's procurement law are violated when they occur "without affirmative approval". I think it may merit further review by EEA whether DCR has complied with the law on this point. Of course, given the House Counsel's conclusions on whether the 2006 MOA even complied with Article 97 in its execution, this point may ultimately be of only academic interest.

B. City and State Obligations in Operation of the Marina.

It remains a serious question as to whether the City of New Bedford and DCR have properly managed and maintained the marina over the years. It has been well known within DCR that the City has been sporadic at best, in paying to the Commonwealth the kind of rental payments from revenues received from the public which were originally contemplated by the legislature in 1993. The law requires explicitly that 15% of annual revenues received by the City at the marina are to be paid to DCR. (Section 1, Chapter 382 of the Acts of 1993). I am informed that DCR may not have in hand a sufficient accounting from the city for many years as to what the revenues are, much less what 15% would constitute. For many years the city paid nothing and whether they are in any kind of compliance now therefore remains something of a mystery.

Does DCR have any current plans to audit the finances of the city on its Pope's Island marina operations to resolve this issue before any contemplated transfer of the property?

DCR's administration of real estate on this and other properties was of course the subject of State Auditor investigations in the past. Analysis and conclusions by the Auditor were published in 2013 and 2018 with regard to DCR.

C. Pier Maintenance.

Separate from payments to the Commonwealth, however is the safety concern I continue to share with you about the current state of the marina and its piers.

In June 2020 Pare Corporation released an updated Inspection Report on the status of the pier facilities. I received a complete copy of the report during that period from the then DCR Commissioner. The Executive Summary from the Pare Corporation Report is Attachment #6.

The Pare Report confirms that the floating dock system is continuing to deteriorate and in serious need of repair. An immediate need was identified for \$500,000 in critical repairs with an overall 2020 cost for replacement of \$5.5 million. I assume that the recently announced \$500,000 grant from the Seaport Council is to be directed (as identified by Pare) to the safety risk from the critically deteriorated concrete float modules. I greatly appreciate the work of the Seaport Council and the LG in approving the grant earlier this year.

CAPITAL REQ DENIED
B/C WE DON'T OWN IT

With the capital need for the recommended further work necessary to the marina, I have also expressed a policy concern to you and others about whether the city of New Bedford has a good record of maintaining the marine assets it already possesses. If the city is without the resources to manage its existing waterfront assets what reason would the administration have to think that New Bedford has any more ability to take on and take care of this marina with its nearly 200 vessel slips?

The answer should be clear that the city is not the best steward of its own property. Attachment #7 is an example of one of several similar letters sent out to leaseholders in 2017 of city pier properties which had been allowed to deteriorate and could no longer be safely used. I understand that the city has yet to undertake the necessary safety repairs to its own deficient waterfront parcels so I would be hard-pressed to justify why they should be allowed to undertake additional properties (like the marina) to maintain for the use of the entire state's citizenry.

Conclusion.

Thank you again for your review of these concerns. I certainly anticipate that you will pause any further steps to get rid of the Pope's Island Marina pursuant to the city's pending request, and that after a further review, you will engage with the legislature in a review of how best to permit DCR to effectively manage the marina in service to the boating and recreational demands of the public.

EXHIBIT 3

Amendment #477 to H4789

Pope's Island Marina

Representatives Hendricks of New Bedford, Markey of Dartmouth, Cabral of New Bedford, Straus of Mattapoisett and Schmid of Westport move to amend the bill by adding the following:

SECTION XXX. (a) Notwithstanding any general or special law to the contrary, and subject to section 5A of chapter 3 of the General Laws, the commissioner of conservation and recreation, is hereby authorized and directed to lease to the New Bedford Harbor Development Commission d/b/a the New Bedford Port Authority a certain area in and over the waters of the Acushnet River in the city of New Bedford, together with improvements thereon and all easements, rights, privileges, and appurtenances thereto for the operation and maintenance of a recreational marine boating facility and recreational area, known as the Pope's Island Marina, for a term of 10 years and may include two 5-year options to extend.

The City of New Bedford shall not enter into sub-agreements of any kind for the operation and maintenance of the marina without prior written authorization from the commissioner of conservation and recreation. True copies of any such written authorization shall be filed with the Clerks of the Senate and House of Representatives no later than 45 days after execution.

(b) The lease and any extensions executed under this act shall be on terms and conditions acceptable to the commissioner of conservation and recreation; provided, however, that the lease and any extensions shall provide, at its sole cost and expense, that the City of New Bedford (i) provide oversight, operations, maintenance and repair of the property, including the land, facilities and appurtenances associated therewith during the term of the lease; (ii) shall carry comprehensive general liability insurance naming the commonwealth as a co-insured, protecting the commonwealth against all claims for personal injury or property damage arising from the use of the land and appurtenances associated therewith during the term of the lease and any extension thereof; (iii) subject to (v) and (vi), may retain revenues from usage fees during the term of the lease and the proceeds from concessions associated with use of the property for the sole purpose of the design, construction, operation, programming, maintenance and repair expenses of the property over the course of the lease in addition to a one time reimbursement for costs defined in Section 2 herein; (iv) may charge not more than ninety dollars (\$90.00) per linear foot for use of slips without prior written authorization from the commissioner of conservation and recreation; (v) shall deposit into an escrow account, shared with the department of conservation and recreation, not less than one hundred thousand dollars, (\$100,000.00) annually, adjusted to the Price Adjustment Formulae Indices every 5 years, to fund capital investments of the property; (vi) shall pay to the department of conservation, in quarterly installments, ten percent of the annual gross revenues defined as total gross revenues after deduction of the \$100,000 described in subsection (v) above; (vii) shall, not later than 3 months after the close of each calendar year, prepare an annual report detailing its performance against the goals for the prior year, detailing all revenues and expenditures of funds for the prior year pursuant to this section, regardless of source, and specifying all usage and programming fee rates associated with planned programs and activities, and submit the report to the commissioner of conservation and recreation; (viii) shall not design, install or construct any facilities on the property without the written approval of the commissioner of conservation and recreation; (ix)

shall be responsible for all utility costs; (x) shall provide not less than 20 parking spaces at no charge to visitors of the abutting playground facility; and (xi) may be responsible for outreach and stewardship with the written approval of the commissioner of conservation and recreation.

(c) The lease and any extensions shall each be reviewed by the inspector general for comment and recommendation.

(d) Before entering into the lease, the commissioner of conservation and recreation shall determine the exact boundaries of the property after completion of a title examination and a survey each commissioned by the department of conservation and recreation.

SECTION XXX. The City of New Bedford shall be responsible for all costs and expenses associated with any engineering, surveys, appraisals, and lease preparation related to the execution of the lease and any extensions under this act; provided, however, that the commonwealth shall not be required to contribute to any such costs.

SECTION XXX Within 90 days of the passage of this act, the commissioner of conservation and recreation shall issue to the City of New Bedford a license to operate and maintain the marina. The terms of said license shall be consistent with this act.

SECTION XXX. If the land, building and facilities, field and appurtenances comprising the property shall cease to be used by the City of New Bedford for the purposes and in the manner described in this act at any time before the conclusion of the lease term, the property shall revert to the commonwealth upon such terms and conditions as the commissioner of department of conservation and recreation may determine, and shall be assigned to the care, custody and control of the department of conservation and recreation.

SECTION XXX. If the commissioner of conservation and recreation fails to enter into a lease with the City of New Bedford pursuant to section 1 before July 1, 2025, the commissioner shall issue, on or before October 1, 2025, a request for proposals seeking a lessee to operate and maintain the Popes Island Marina and recreational area. Any lease resulting from a request for proposals process pursuant to this section shall be for a term not to exceed 20 years, inclusive of any extensions.

EXHIBIT 4



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

July 2, 2024

Rebecca L. Tepper
Secretary of Energy and Environmental Affairs
Commonwealth of Massachusetts
100 Cambridge Street, Suite 900
Boston, MA 02115

Re: House Amendment concerning Pope's Island Marina

Dear Secretary Tepper:

Thank you for forwarding to me the amendment to the Economic Development Bill filed by members of New Bedford's delegation to the House of Representatives, which sets forth the terms under which the Pope's Island Marina may be leased to the New Bedford Port Authority [Amendment #477 to H4789]. Like you, neither the City nor the Port Authority were consulted by the sponsors of the bill before it was filed, even though the Commonwealth, through your office, and the Port Authority, would be the two parties to the lease. I have since learned that not all of the sponsors were aware the amendment had not been run by us.

As I explained in my May 3, 2024 letter to you, the City and Port Authority have long pleaded with DCR to replace the marina docks as they are well beyond their useful life span. After decades of operating the marina and faithfully repairing the docks as needed, we proposed that if the Commonwealth did not want to replace the docks, the Port Authority would be willing to bear the burden of ownership, and attempt to finance their replacement. We did so as a last resort, having concluded that in the absence of sufficient state capital funds, municipal ownership would be the only way to keep the marina running. We are grateful that in subsequent discussions the Healey Administration expressed a willingness to fund the replacement.

As I have explained, the Port Authority would be willing to operate the facility if we determined that it would be in the Port's interests to do so. Unfortunately, the proposed amendment would effectively forecloses that possibility. The amendment would impose arbitrary costs on the Authority, restrict its ability to manage the facility efficiently, and inhibit its authority to charge boaters market rates for its use. Some of amendment's provisions are vague, most notably its identification of what "property" would be subject to lease. Moreover, the funding mechanism proposed in the delegation's cover letter to you would be inadequate to sustain service in the long run. According to the 2020 engineering study, the docks need to be replaced, not merely

repaired, which in 2020 dollars would cost between \$5.5-7.0 million, materially less than what it would cost in today's dollars.

If the Commonwealth determines that a state agency or a private entity should assume the operation of the marina – especially given that the reporting requirements and other obligations in the amendment would apply only to the City/Port Authority – we would be prepared to facilitate a smooth transition. This would include our making the adjoining building available for a market rate rent. We also would be willing to operate the facility during the transition period under the terms of the existing agreement between DCR and the Port Authority.

Thank you again for your efforts to establish a path forward for this important recreational facility.

Sincerely,



Jon Mitchell

Mayor and Chairman of the New Bedford Port Authority

cc: Governor Healey
Lieutenant Governor Driscoll
Commission Brian Arrigo, DCR
New Bedford State Legislative Delegation
Commissioners of the New Bedford Port Authority
Gordon Carr, Port Director

EXHIBIT 5



NEW BEDFORD
PORT AUTHORITY

123 MacArthur Drive TEL (508) 961-3000
New Bedford, MA 02740
WWW.PORTOFNEWBEDFORD.ORG

November 7, 2024

Hon. Stephanie Cooper
Assistant Secretary
Executive Office of Energy and Environmental Affairs

Re: 2025 season at Pope's Island Marina

Dear Stephanie:

As you may be aware, the current Memorandum of Agreement (MOA) between the New Bedford Port Authority (NBPA) and the Department of Conservation & Recreation (DCR) that governs our management and operation of Pope's Island Marina is scheduled to expire on June 30th, 2025. The MOA also requires a 6 month notice to either extend or terminate that agreement, which would be December 30th, 2024.

Since the current MOA expires mid-season next year, we plan to continue to operate the marina beyond that deadline. We will soon begin taking reservations for boat slips at the marina for 2025, and I think you would agree it would be untenable for all involved to attempt to transfer operational management to DCR mid-season. After the end of the season, if DCR wishes to have us stop operating the marina, the NBPA will turn operational control of the piers, floats, and docks over to DCR after the end of the slip contracts in mid-October 2025.

There is also the issue of the pending legislative language concerning the future lease terms for the marina, although it is unclear when or if action will be taken on that legislation. As Mayor Mitchell has told Secretary Tepper in writing, if that legislation passes as currently crafted, the NBPA will not be able to sign a new lease under those terms. With the financial obligations of the proposed escrow account and payment to DCR of 10% of *gross revenues* – particularly during a time of very high expenses for maintenance and reconstruction – we could easily be faced with a scenario where the NBPA would be subsidizing the marina with proceeds from dockage fees paid by the commercial fishing fleet. I think you would agree that would be an unacceptable situation.

Absent a new lease with the NBPA, the legislation calls for DCR to issue a Request for Proposals to operate the marina. We are prepared to support such an effort, and we are also prepared to operate the marina under the terms of our current MOA until such time as you ask us to cease and turn operations



NEW BEDFORD
PORT AUTHORITY

123 MacArthur Drive TEL (508) 961-3000
New Bedford, MA 02740
WWW.PORTOFNEWBEDFORD.ORG

over to a new entity. It will likely take time to select a new operator and have that operator prepared to take over, and we would all want to ensure uninterrupted service for marina customers.

DCR can begin the RFP process required under the current legislative language to seek a new operator for 2026. If you should choose to have us cease operating, DCR can take reservations for the winter 2025-2026 boat storage and live-aboards and operate the marina itself as the RFP process moves forward. Alternately, the NPBA is prepared and willing to continue to manage operations until such time as DCR asks us to stop doing so. As you are aware, NBPA is currently utilizing the storm damage insurance claim proceeds to construct replacement docks and will be installing those in time for next season.

If for any reason you do not want us to continue to operate the marina for the months after expiration of the MOA next June, it is imperative that DCR inform us of that as soon as possible so we can halt the 2025 reservation process. Allowing the reservations process to proceed without an understanding of the operating entity after June could result in confusion and uncertainty for slipholders and ultimately the loss of future business, which could harm the RFP effort to find a new operator.

Thank you and if you have any questions or would like to arrange a meeting to discuss this timeline and sequence in more detail, I will make myself available anytime.

Sincerely,

Gordon M. Carr
Executive Director

EXHIBIT 6



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



100 CAMBRIDGE ST. BOSTON MA 02202 PHONE 617-727-3180
FAX 617-727-9402 WWW.STATE.MA.US/DEM/

SPECIAL USE PERMIT

Argeo Paul Cellucci
GOVERNOR

New Bedford Harbor Development Commission
(NBHDC)
New Bedford, Massachusetts

Trudy Cove
SECRETARY

Peter C. Webber
COMMISSIONER

Pursuant to the authority set forth in Chapter 21, Section 4A and Chapter 132A, Sections 2B, 2D and 7 of the General Laws of the Commonwealth of Massachusetts; rules and regulations promulgated thereunder and all other powers enabling:

The Commonwealth of Massachusetts, Department of Environmental Management (hereinafter "the Department"), does hereby authorize the New Bedford Harbor Development Commission, Wharfinger Bldg., Fisherman's Wharf, New Bedford, MA 02740 (hereinafter "Permittee") to use a certain area in and over the waters of the Acushnet River in the City of New Bedford as referenced in attached Lease (Attachment #1) for the purpose of operating and maintaining a 198 slip Recreational Boat Marina in accordance with attached Lease Terms (Attachment #1).

In order to protect the rights and safety of the general public as well as insure the reasonable exercise for the permitted use, the following conditions and provisions shall prevail:

1. The time for the use authorized hereby shall be for a period of one (1) year beginning May 1, 1998 and terminating April 30, 2001. Renewal for this permit shall be the responsibility of the Permittee to request. Requests must be in writing and submitted to the Department (at 100 Cambridge Street, Boston, MA 02202, Attention: Director of Forests and Parks) no later than 60 days prior to the date of the termination. Failure to renew within the prescribed time will result in automatic termination of this permit and revocation of all rights authorized herein.
2. Consideration for this permitted use is described in attachment #1.

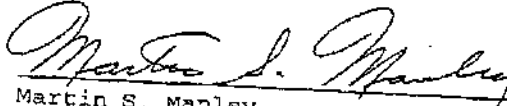


3. The Permittee agrees to conform to all laws, rules and regulations of the Division of Forests and Parks and those of all other state, federal and local agencies.
4. This permit is not transferable and no privilege contained herein may be assigned or sublet to any other person or organization.
5. Permittee's use of site is not exclusive. Members of the general public may use the site for the purposes authorized herein and shall be subject to the rules and regulations of the Department and the Permittee.
6. The exercise of this permitted use shall constitute permittee's acceptance of complete liability and responsibility for Permittee's use of the property and its actions and the actions of its members, guests, invitees, agents and employees upon the site, and an agreement that the Permittee will indemnify and hold harmless the Department against any and all claims that may arise therefrom.
7. Permittee must maintain a liability, casualty and property insurance policy as per the terms in the lease (attachment #1) for the full term of this permit and provide the Department with proof thereof at the beginning of each term the permits is issued.
8. The Commissioner of the Department or the Director of the Division of Forests and Parks may cancel this permit at any time and for any reason which, in his sole opinion and judgement, is in the best interest of the Department.
9. Permittee shall maintain the area subject to this permit in good condition, free of litter, garbage, refuse of debris, and shall do and allow nothing which would cause environmental or physical damage to the property or to natural resources.

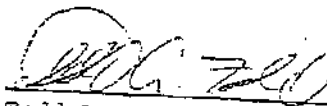
10. Improvements to the site beyond normal maintenance undertaken by Permittee must be approved in advance by the Department. Approval must be in writing.

I have read the foregoing conditions and provisions and approve of and agree to these terms.

Date: _____


Martin S. Manley,
New Bedford Harbor Development
Commission

Date: 8/18/98


Todd A. Frederick, Director
Division of Forests & Parks

Date: _____

Peter C. Webber, Commissioner
Dept. of Environmental Mgmt.

LEASE

This indenture of Lease made on this ____ day of _____, 1993 by and between the Commonwealth of Massachusetts, Department of Environmental Management , pursuant to its authority under M.G.L. Ch 132A and Chapter 564 of the Acts of 1987 with a usual place of business at 100 Cambridge St., Boston, MA, hereinafter referred to as "Landlord", and The New Bedford Harbor Development Commission, a public instrumentality authorized pursuant to Chapter 762 of the Acts of 1957 as amended by Chapter 193 of the Acts of 1960, Chapter 247 of the Acts of 1982 and Chapter 126 of the Acts of 1991, with a usual place of business at Pier Three, Wharfinger Building, Fishermen's Wharf, New Bedford, MA, hereinafter referred to as "Tenant".

1. DEMISE OF LAND

Landlord hereby demises and lets to Tenant for the term hereinafter described those improvements to a parcel of land located in New Bedford, MA as more fully described in Exhibit "A" attached hereto, and made pursuant to Ch. 91 License No. 1882, attached hereto and marked Exhibit "B", as well as certain structures in and over the Acushnet River of land located in the

REV. 3/19/93

City of New Bedford, County of Bristol, Commonwealth of Massachusetts, also made pursuant to License No. 1882, and all easements, rights, privileges and appurtenances relating thereto (the "Demised Land"). The Personal Property situated at the Demised Land, all of which have been or will be and, subject to the terms and conditions of this Lease, shall remain, the sole property of Tenant. The Demised Land and improvements are hereinafter collectively referred to as the "Premises."

2. TITLE AND CONDITION

The Premises is demised and let subject to the rights of any parties in possession thereof; the state of the title thereof as of the commencement of this Lease; to any state of facts which an accurate survey or physical inspection thereof might show; and to all zoning regulations, restrictions, easements, rules and ordinances, building restriction and other laws and Regulations now in effect or hereafter adopted by any Governmental authority having jurisdiction and to the existing encumbrances, if any.

3. USE OF DEMISED LAND AND PREMISES.

Tenant is granted the right to occupy and use the Premises for the sole purpose of construction, development and operation of a marina and appurtenant recreational area. Tenant shall not do or permit any act or thing which is contrary to any Legal

Requirement or Insurance Requirement, or which might impair the value or usefulness of the Premises or any part thereof, or which constitutes a public or private nuisance or waste.

4. TERM.

Subject to the terms, covenants and conditions herein, Tenant shall have and hold the Premises for a term of five (5) years commencing _____, 199_ ("Commencement Date") and expiring at Midnight on _____, 199_, unless sooner terminated as hereinafter provided. The Tenant shall have the right at its sole option to renew this lease for an additional five (5) year term, provided that notice of such renewal is mailed to the Landlord by no later than 180 days prior to the expiration of the original lease term.

5. RENT.

Tenant agrees to pay as rent to the Landlord on an annual basis, by March 1st of each year, fifteen percent (15%) of the Tenant's annual gross revenues from the operation of the marina on the Premises, from revenues received from operations for the prior calendar year. Two thirds of rent so paid is to be deposited by the Landlord into the Inland Harbors and Waterways Fund. The remaining one third of rent so paid shall be paid directly to the Landlord for its own use. For the purposes of this lease "gross revenues" is hereby defined as all revenues

received by the Tenant in its Marina operations, reduced by any and all current deposits into the segregated escrow account for repairs and replacement, detailed below.

Commencing with the first year of this lease term, the Tenant shall make no rental payments and shall not be required to make deposits to the escrow account for marina structures, described below. Commencing with the second year of marina operations however, the Tenant shall again make no rental payments but shall be responsible, for this year and every year of marina operations pursuant to this lease thereafter, to make payment in the amount of Twenty Thousand Dollars (\$20,000.00), by March 1st, to be deposited into a segregated interest bearing escrow account, requiring the signatures of both the Tenant and the Landlord, or their designees. The funds from this account are to be used solely for capital repairs and replacement to Marina structures and improvements, and may be so expended only with prior written approval of the Commissioner of Environmental Management, which approval shall not be unreasonably withheld.

It is agreed by the Tenant that except for those funds considered to be an "allowable disbursement", "net income" from the operation of the Marina may be used only to make payments pursuant to the Tenant's ground lease with the Board of Park Commissioners, dated October 2, 1991, and for improvements and repairs to New Bedford Harbor, its piers, wharves or bulkheads, and for such other purposes as the Commissioner of the Department

of Environmental Management may allow. For the purposes of this subparagraph, "allowable disbursement" shall include those expenses detailed in Exhibit C, attached hereto, as well as the costs of obtaining liability and property damage insurance as required under the terms of Paragraphs 8 and 13 of this lease. For the purposes of this subparagraph, "Net Income" shall be defined to mean the gross revenues received by the Tenant from the operation of said marina after deducting the following expenses: rent and all other payments in the nature of rent pursuant to this lease, the costs of maintaining Marine Park, Waterfront Park and Palmer's Island, and direct expenses associated with the Marina, including but not limited to, salaries, employee benefits, insurance, supplies and legal fees.

Tenant further agrees to limit its operating expenses to no greater than fifty percent (50%) of the Marina's gross revenue, not to exceed One hundred and twenty thousand dollars (\$120,000.) per year, with the exception of the first full year's Marina operation. Furthermore, Tenant shall provide to the Landlord an annual report of expenses from gross proceeds which will determine the Tenant's "Net Income", by March 1st of each year.

At the expiration of this lease, and any renewals thereof, any unexpended funds remaining on deposit in the above described escrow account shall be deposited by the Tenant, through the Landlord, into the Commonwealth's Inland Harbors and Waterways Fund.

6. IMPROVEMENTS.

All non-water structure related improvements hereafter erected or located on the Premises, by or on behalf of the Tenant pursuant to Section 12 of this Lease, shall remain the property of the Tenant, subject to the terms and conditions of this Lease,

7. NONTERMINABILITY.

Except as expressly provided in Sections 14(a) and 17(a), this Lease shall continue in full force and effect, and the obligations of Tenant hereunder shall not be released, discharged or otherwise affected, by reason of: (i) any damage to or destruction of the Premises or any part thereof or the taking of the Premises or any part thereof by condemnation, requisition or otherwise for any reason, (ii) any restriction or prevention of or interference with any use of the Premises or any part thereof, or (iii) any title defect or encumbrances or any eviction from the Premises or any part thereof by title paramount or otherwise.

8. LEGAL AND INSURANCE REQUIREMENTS.

Tenant at its expense shall promptly (i) comply with all legal requirements and insurance requirements, whether or not compliance therewith shall require structural changes or interfere with the use and enjoyment of the Premises or any part

thereof, (ii) procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Premises or any part thereof then being made, and for the proper erection, installation, operation and maintenance of improvements, and (iii) comply with any instruments of record at the time in force affecting the Premises or any part thereof.

9. LIENS.

Tenant shall not directly or indirectly create or permit to be created or to remain, and shall discharge any lien, encumbrances or charge on, or pledge of, the Premises or any part thereof or Tenant's interest therein, other than: (a) this Lease and any assignment hereof or sublease hereunder; (b) Permitted Encumbrances; (c) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, incurred in the ordinary course of business for sums which under the terms of the related contracts are not yet due, provided that such reserve or other appropriate provision, if any, as shall be required by generally accounting principles shall have been made therefor.

10. INDEMNIFICATION.

Tenant shall protect, indemnify and save harmless Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses,

including, without limitation, reasonable attorneys fees and expenses imposed upon or incurred by or asserted against Landlord or the Premises during the term of this Lease, for any reason, including but not limited to, (a) any accidents or injury to or death of persons or loss of or damage to property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (b) any failure on the part of Tenant to perform or comply with any of the terms of this Lease, (c) any negligence or tortious act on the part of Tenant or any of its agents, contractors, sublessees, licensees or invitees or (d) any mechanic's or suppliers' claim for lien in connection with or work done or materials furnished relating to the Premises. In case of any such occurrence, Tenant, upon request of Landlord, shall at Tenant's expense defend such action, suit or proceeding.

11. MAINTENANCE AND REPAIR.

Tenant, at its expense, shall keep the Premises and the adjoining sidewalks and curbs and ways, if any, in good and clean order and condition, ordinary wear and tear excepted, and shall promptly make all necessary or appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. Landlord shall not be required to maintain, alter, repair,

rebuild or replace the Improvements on the Premises or any part thereof, or to maintain the Premises, or parts thereof, in any way. Tenant shall have the right at any time and from time to time to sell or dispose of any machinery, furniture, equipment or fixtures, whether or not subject to this Lease, which may have become obsolete or unfit for use or which is no longer useful, necessary or profitable in the conduct of the Tenant's business, provided that the Tenant shall then or theretofore substitute for the same other machinery, furniture, equipment or fixtures not necessarily of the same character, but of a value at least equal to that of the property so disposed .

12. CONSTRUCTION, ALTERATIONS AND ADDITIONS.

Tenant shall have the right to make, at its sole cost and expense, additions, alterations and changes (hereinafter sometimes referred to as "Alterations") in or to the Premises, provided Tenant has first obtained the approval of the Landlord, which approval shall not be unreasonably withheld.

13. INSURANCE.

(a) So long as this Lease remains in effect, Tenant, shall cause to be maintained by its licensees, if any, a policy of public liability and property damage insurance under which the

Landlord, and Tenant are named as insureds and under which the insurer agrees to indemnify and hold harmless the Landlord and Tenant from any liability arising out of or based upon any and all claims, accidents, injuries and damages as set forth in Paragraph 10 above. Each such policy shall be noncancelable with respect to the Landlord and Tenant without ten (10) days prior notice to Landlord and Tenant, and a duplicate original or certificate thereof shall be delivered to Landlord and Tenant. The minimum limits shall be One Million Dollars (\$1,000,000.00) combined single limit covering personal injury liability and property damage. Certificate of such insurance coverage shall be delivered to Landlord by Tenant not later than ten (10) days after Tenant has first taken possession of the premises.

(b) Any insurance required to be maintained by Tenant pursuant to this Section 13 may be evidenced by blanket insurance policies covering the Premises and other property or assets of Tenant licensee, provided that any such policies of the type referred to in Section 14(a) shall specify that portion of the total coverage of such policy that allocated to the Premises and shall, in all other respects, comply with the requirements of this Section 14. All insurance proceeds paid to Tenant shall be held in trust by Tenant for application in the manner provided in Section 15 .

(c) All insurance policies covering the Premises shall expressly waive any right on the part of the insurer to be subrogated to any rights of Landlord against Tenant and to any rights of Tenant against Landlord .

(d) Tenant promptly upon request deliver to Landlord certified copies of all insurance policies (or, in the case of blanket policies, certificates thereof) with respect to the Premises which Tenant is required to maintain pursuant to this section.

14. CASUALTY.

(a) If, at any time during the term of this Lease, the improvements or any part thereof, shall be damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, the Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose of adjusting such loss, to repair, alter, restore, replace or rebuild the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction, subject to such changes or alterations as the Tenant may elect to make in conformity with the provisions of Section 12 hereof, restoration, replacement or rebuilding, including such changes

and alterations as aforementioned and including temporary repairs or the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the "Work".

(b) Except as otherwise provided in this Section, the conditions under which any repairs, alterations, restoration, replacement or rebuilding Work are to be performed and the method of proceeding with the performing the same shall be governed by all of the provisions of Section 12 hereof.

(c) All insurance money paid to the Tenant on account of such damage or destruction under the policies of insurance provided for in Section 13 hereof, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "Insurance Proceeds"), shall be held by the Tenant in trust and applied exclusively to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose, and shall be paid out by Tenant from time to time as such Work progresses. All sums so paid to the Tenant and any other insurance proceeds received or collected by or for the account of the Tenant (other than by way of reimbursement to the Tenant's licensee for sums theretofore paid by the Tenant) shall be held by the Tenant in trust for the purpose of paying the cost of such Work.

Under no circumstances shall Landlord or Tenant be obligated to make any payment, disbursement or contribution towards the cost of the Work except to the extent of any insurance proceeds actually received by Landlord or Tenant.

15. ASSIGNMENT, MORTGAGE, SUBLETTING.

(a) There shall be no assignment or subletting without the Landlord's prior written approval, which approval shall not be unreasonably withheld. The making of any license, mortgage, pledge, encumbrance or subletting, in whole or in part, shall not operate to relieve Tenant herein named from its obligations under this Lease.

(b) Each and every subtenant or licensee shall immediately be and become and remain liable under this Lease, and for the due performance of all the covenants, agreements, terms and provisions of this Lease on Tenant's part to be performed to the expiration or earlier termination of the term of this Lease and each and every provision of this Lease applicable to Tenant shall also apply to and bind every such subtenant or licensee with the same force and effect as though such subtenant or licensee were the Tenant named in the Lease. No transfer to such licensee or to such subtenant shall be binding upon Landlord unless such licensee or subtenant shall deliver to Landlord a recordable instrument which contains a covenant of assumption by said licensee or subtenant to such effect, but the failure or refusal

of such licensee or subtenant to such effect to deliver such instrument shall not release or discharge such licensee or subtenant from its obligations and liability as above set forth.

16. CONDITIONAL LIMITATIONS - DEFAULT PROVISIONS.

This Lease and the term and estate hereby granted are subject to the limitation that:

(a) Whenever Tenant shall fail to observe or perform any of Tenant's covenants, agreements or obligations hereunder and such failure shall continue for thirty (30) days after notice thereof has been sent to Tenant by Landlord or, if such default cannot be cured by the payment of money and cannot with due diligence be cured within such thirty (30) day period owing to causes beyond the control of Tenant, if Tenant shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence and continuity:

Upon such termination or expiration of this Lease, Tenant shall peaceably quit and surrender the Premises to Landlord and Landlord may without further notice enter upon, re-enter, possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess and remove Tenant and all other persons and property from the Premises and may have, hold, and enjoy the Premises and the right to receive all rental and other income of and from the same.

17. LEASEHOLD IMPROVEMENTS

Any and all leasehold water structure improvements shall become the property of the Commonwealth of Massachusetts upon the expiration of this lease and any renewals thereof, subject to Paragraph 6 above.

18. IMPAIRMENT OF LANDLORD'S TITLE.

Except as otherwise set forth in this Lease, Tenant shall not have the right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of Landlord in the Premises.

19. QUIET ENJOYMENT.

Landlord covenants that if and so long as Tenant keeps and performs each and every covenant, agreement, term, provision and condition herein contained on the part and on behalf of Tenant to be kept and performed, Tenant shall quietly enjoy the Premises without hindrance or molestation by Landlord subject to the covenants, agreements, terms, provisions and conditions of this Lease.

20. ESTOPPEL CERTIFICATE.

The parties mutually agree that at any time and from time to time upon written request of the Landlord, Tenant or Tenant's licensee, and at the reasonable cost and expense to the party requesting the same, Landlord, Tenant or Tenant's licensee, as the case may be, will execute, acknowledge and deliver to the requesting party a certificate evidencing whether or not:

- (a) the Lease is in full force and effect;
- (b) said Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments, if any; and
- (c) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

21. SURRENDER.

Upon any expiration or other termination of this Lease, Tenant shall quit and surrender the Premises to Landlord in good order and condition, except for ordinary wear and tear. At any time during the term of this lease and upon the termination of this lease, Tenant shall have the right to remove from the Premises all Tenant's non-water related structures and improvements.

22. NO MERGER.

There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate or interest in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or entity may acquire or own or hold, directly or indirectly (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate, and (b) any such other estate or interest in the Premises or any part thereof, and no such merger shall occur unless and until all corporations, firm and other entitles having an interest (including a security interest) in (i) this Lease or the leasehold estate created by this Lease and (ii) any such other estate or interest in the Premises or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.

23. NOTICES.

(a) All notices, demands, requests or other communications which may be or are required to be given, served or sent by either party to the other shall be in writing and shall be deemed to have been properly given or sent (i) by mailing by registered or certified mail with the postage prepaid, addressed to such party at the address hereinabove first set forth for such party and, in the case of any notice to Landlord, with a copy to:

_____;
and, in the case of any notice to Tenant, with a copy to: Irene
B. Schall, Esq, 558 Pleasant St., New Bedford, MA 02740.

25. CONSTRUCTION AND INTERPRETATION.

(a) If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be affected thereby. Any approval or consent of Landlord or Tenant required hereunder shall not be unreasonably withheld or delayed. This Lease may be changed, waived, discharged or terminated only by an instrument in writing, signed by Landlord and Tenant. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. This Lease may be executed in any number of counterparts, each of which shall be an original, but any number of which shall together constitute one and the same instrument.

(b) This Lease shall be construed and enforced in accordance with the law of the Commonwealth of Massachusetts.

(c) The terms of this lease are made expressly conditional upon the approval of same by the Commonwealth of Massachusetts, through its Department of Environmental Management. Any

modification mandated by the Commonwealth shall be a valid and binding amendment to this lease, without recourse by either party.

26. RESERVATIONS

The Landlord acknowledges that of the 198 slips in the Marina, certain of these slips will be reserved for vessels which will not be charged for berthing at the Marina. Two slips have been reserved for the City of New Bedford in the event it operates a recreational sailing program. It is anticipated that five other slips will be provided at no charge to: the City of New Bedford Police Boat, the City of New Bedford Fire Boat, a boat belonging to the New Bedford Harbor Development Commission, a boat belonging to the Department of Environmental Management Environmental Police, on a year round basis.

IN WITNESS WHEREOF, the parties hereby have executed the foregoing instrument this _____ day of _____, 199_.

TENANT

APPROVED

NEW BEDFORD HARBOR DEVELOPMENT
COMMISSION

By: _____
ROSEMARY S. TIERNEY, MAYOR
OF THE CITY OF NEW

BEDFORD AND CHAIRPERSON
OF THE NEW BEDFORD HARBOR
DEVELOPMENT COMMISSION

LANDLORD

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

By: _____

APPROVED AS TO FORM AND LEGALITY:

ARTHUR J. CARON, JR.
City Solicitor,
CITY OF NEW BEDFORD

IRENE B. SCHALL,
Counsel for NEW
BEDFORD HARBOR DEVELOPMENT COMMISSION