

November 18, 2025

Via Electronic Mail

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Re: Pope's Island Marina – Lease Payments, Marina Maintenance and Repair

Dear President Spilka, Speaker Mariano, Commissioner LaChapelle and Executive Director Carr:

On August 1, 2023, the Office of the Inspector General (OIG) received a complaint that the New Bedford Port Authority (NBPA), the lessee of Pope's Island Marina, was not making payments to the Department of Conservation and Recreation (DCR), the lessor, as required by Section 1 of Chapter 382 of the Acts of 1992 (Chapter 382).

The OIG received 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; 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.

In its ensuing investigation, the OIG made several findings as set forth below, including that (1) neither DCR nor the NBPA could produce a signed lease; (2) DCR and the NBPA could provide only limited evidence of the annual rents the NBPA paid between 1994 and 2015; (3) DCR could not produce records of slip fees that should have been used to calculate annual rents; (4) DCR did not have controls to ensure that the NBPA paid the correct amount in annual rents; (5) DCR did not have a reconciliation process to account for missing or inaccurate payments; (6) the NBPA has paid less annual rent since 2016 than it did in 2000; (7) neither DCR nor the NBPA have accounted for \$190,000 in capital repair funds; (8) the NBPA failed to make timely marina repairs as required under the parties' agreements; (9) the NBPA cannot demonstrate that it has the resources to properly maintain Pope's Island Marina; and (10) DCR has not demonstrated it is a good steward of public assets.

In addition to its findings, the OIG makes a number of recommendations herein for DCR and the NBPA to implement.

Background

1. Governing Documents

In 1992, the Legislature passed a measure directing the Division of Capital Planning and Operations – now the Division of Capital Asset Management and Maintenance (DCAMM) – to lease an area “in and over the waters” off downtown New Bedford to the New Bedford Harbor Development Commission (NBHDC) (now the New Bedford Port Authority (NBPA)). The NBHDC was to construct, develop, operate, and maintain a marina and recreational area, today known as Pope’s Island Marina.¹ The Legislature directed that the lease be for a term of five years, with an option to renew for an additional five years. The legislation also specified that the lease contain a provision requiring NBHDC to annually pay the Department of Environmental Management (DEM) (now the Department of Conservation and Recreation (DCR)) a rent of 15% of the gross revenues from the operation of the marina.² DEM was to direct two-thirds of the rent to the Harbors and Inland Waters Maintenance Fund and could expend the remaining one-third at its discretion.

Notwithstanding that the 1992 legislation specified a “lease,” the parties ultimately used other contractual vehicles to document their “meeting of the minds.” Figure 1 below reflects the agreements that DCR and the NBPA have used since 1994 to govern marina operations and maintenance.

Dates	Governing Documents
May 1, 1994 – April 30, 1995	Special Use Permit, with unsigned lease ^{3,4,5}
May 1, 1998 – April 30, 2001	Special Use Permit, with unsigned lease
May 1, 2001 – April 26, 2005	Special Use Permit, with unsigned lease
April 27, 2005 – June 30, 2010	First Memorandum of Understanding (MOA)
December 15, 2006 – present	Second (Superseding) MOA ⁶

Figure 1. Governing Documents for Operation of Pope’s Island Marina, 1994 – Present

¹ 1992 Mass. Acts c. 382, § 1.

² *Id.* The legislation specifies that “[s]aid lease shall contain a provision wherein the lessee agrees to pay to the department of environmental management annually by March first, fifteen percent of the lessee’s annual gross revenues received from the operation of the marina on the leased premises for the prior calendar year.”

³ The parties included an unsigned lease agreement as an attachment to the special use permits in effect from 1994 through 2005. While not explicit, the OIG reads this action to suggest that the terms of the unsigned lease were to be incorporated into the special use permits and applicable to the NBPA’s operation and maintenance of Pope’s Island Marina.

⁴ Special use permits are authorized under M.G.L. c. 132A, §§ 2D and 7 and the rules and regulations promulgated thereunder.

⁵ The special use permit effective from May 1, 1994 to April 30, 1995 included a renewal option by the NBPA. Neither DCR nor the NBPA provided evidence that the NBPA formally exercised this option.

⁶ The Second MOA included a provision that the agreement would automatically renew for one or more consecutive five-year terms.

Relevant provisions of the unsigned lease that accompanied the special use permits, including terms related to rent payments, expense reporting, and a capital repair account, are set forth in Appendix A.

In the First MOA, DCR authorized the NBPA to “exercise complete management control” over the marina and agreed to assist the NBPA in obtaining necessary permits for the continued operation of the marina, in addition to any required for expansions, modifications, or alterations. According to the First MOA, the NBPA was responsible for complying with all legal and insurance requirements. The NBPA was to charge a berthing fee for the use of the slips not exceeding 85% of the berthing fee charged by recreational marinas within a 20 mile radius, obtain prior written approval for any increases in fees or charges, maintain the marina’s infrastructure, and promptly make needed repairs.

The First MOA’s provisions on maintenance, repairs, and rent payments are set forth in Appendix B.

The Second MOA’s rent provisions require the NBPA to pay DCR a flat fee of \$45,000 per year (or more based on increases in marina fees) minus 50% of what the NBPA paid for electricity at the New Bedford State Pier. Once the New Bedford State Pier had separately metered utilities (which occurred in 2017, when MassDevelopment took control of the pier’s operations and maintenance), the NBPA was no longer able to deduct the electricity payments for the pier.

The Second MOA’s provisions on maintenance, repairs, and rent payments are set forth in Appendix C.

2. 2024 Legislation

On November 20, 2024, the Governor signed Chapter 238 of the Acts of 2024 (Chapter 238) into law. Section 296 of Chapter 238 directs DCR to develop a new lease for the operation and maintenance of Pope’s Island Marina. The legislation also specifies that “[i]f the commissioner of conservation and recreation fails to enter into a lease with the New Bedford Harbor Development Commission [now the NBPA] pursuant to [this act] before July 1, 2025, the commissioner shall issue, on or before October 1, 2025, a request for proposals [RFP] seeking a lessee to operate and maintain the Pope’s Island Marina and recreational area.”

DCR did not enter a lease with the NBPA by July 1, 2025. Pursuant to Chapter 238, DCR issued an RFP requesting “proposals from qualified individuals, municipalities, corporations or other business entities ... who desire to operate, manage and maintain” Pope’s Island Marina.⁷

⁷ The RFP and its related documents can be referenced on [DCR’s website](#). Responses are due by January 9, 2026, with a lease to commence in 2027. The OIG outlines several concerns about the RFP in Finding 10.

Findings

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

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. Neither DCAMM, nor DCR, nor the NBPA could provide the OIG with a signed lease as contemplated by Chapter 382. The OIG found that DCR and the NBPA drafted leases that were not executed.⁸ While DCR and the NBPA used a special use permit and attached an unsigned lease, that approach was not consistent with the law, was not explicit as to its purpose, and was not consistent with how the arrangement was carried out. The parties should have followed the law as directed.

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 NBPA does not have complete records for the period between 1994 and 2006 when the NBPA operated the marina under the special use permits and the First MOA.

As shown in Appendix A, the unsigned lease agreement attached to the special use permits described the rent the NBPA was expected to pay DCR as 15% of its annual gross revenues from operation of the marina, calculated from revenue generated the prior calendar year. Within the lease, gross revenues are 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."

In addition to 15% of gross revenues, the unsigned lease agreement required the NBPA to make annual payments of \$20,000 into a segregated interest-bearing escrow account for the sole purpose of capital repairs and the replacement of marina structures and improvements.

Under the First MOA, the capital repair account was discontinued.

As shown in Appendix C, the NBPA and DCR acknowledged in the Second MOA that the NBPA owed \$162,222.59 to DCR for rent from January 1, 2004, to June 30, 2006. DCR agreed to deduct \$107,792.52 from that amount for casualty premiums, costs of repairs due to a casualty event, and 50% of electricity costs the NBPA paid for the New Bedford State Pier. With that deduction in the amount the NBPA owed to DCR, the NBPA agreed to pay, and did pay, the delinquent balance of \$54,430.07 in 2006.

The OIG requested that (1) DCR provide the marina's financial statements from May 1, 1994, to April 30, 2006; and (2) the NBPA provide evidence of all payments it made to DCR related to Pope's Island Marina. DCR was unable to deliver any of the requested records, and the NBPA

⁸ Not executing a lease constitutes a significant management failure. It is also problematic if the special use permit and the unsigned lease were to be used in lieu of an executed lease. If the parties did execute a lease, their inability to produce it runs contrary to the Commonwealth's records retention law. Indeed, as discussed throughout this letter's findings, DCR and the NBPA were less than diligent in their responsibility to keep records related to the operation and maintenance of Pope's Island Marina under Chapter 382. The OIG has stated, time and again, that poor recordkeeping opens the door to fraud, waste, and abuse of public assets.

produced only one year of marina-related financial statements and limited evidence of rent payments and capital repair account deposits.⁹

Appendix D details the annual rents that the OIG determined the NBPA paid from 1994 to 2006, based on the records the NBPA did provide.

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.

Beginning in Fiscal Year (FY) 2007,¹⁰ the NBPA agreed through the Second MOA to pay DCR \$45,000 per year (or more if slip fees increased) minus 50% of what the NBPA paid for electricity at the New Bedford State Pier. Once the New Bedford State Pier had separately metered utilities under Mass Development in 2017, the NBPA would pay DCR \$45,000 per year (or more if slip fees increased) without any deductions.

However, neither DCR nor the NBPA could demonstrate that the NBPA paid DCR these amounts to operate Pope's Island Marina between 2007 and 2015.

DCR did provide a report downloaded from the Massachusetts Management Accounting and Reporting System (MMARS) that reflected the total amount the NBPA paid to DCR for each fiscal year during this period. The MMARS report lumped the payments that the NBPA paid to DCR each year for both Pope's Island Marina and the New Bedford State Pier. DCR did not have separate records showing the amounts the NBPA paid specifically for Pope's Island Marina.

Separately, for FY07 through FY15, the NBPA's records of its rent calculations show that credits were deducted from the rent due for Pope's Island Marina for expenses related to the New Bedford State Pier. The pier expenses were for (1) natural gas; (2) telephones; (3) winch cable replacement on the ferry terminal transfer bridge; (4) a new sewer line; (5) refrigeration; and (6) R&M, plowing, and security, for which some years only included an estimate.¹¹ Neither DCR nor the NBPA could provide an agreement or any documentation that supported reducing the marina rent based on these expenses. But according to its rent calculations, the NBPA deducted \$209,743.16 in expenses from its rent between FY07 and FY15. These deductions likely meant that the NBPA paid no rent in some years.

The OIG calculated that the NBPA should have paid DCR at least \$140,006.44 during the period from FY07 through FY15. The OIG used the \$45,000 yearly base per year minus 50% of the estimated electric costs provided in the NBPA's rent calculations.¹²

⁹ As noted in Footnote 8, *supra*, it is imperative that DCR and the NBPA prioritize their recordkeeping protocols.

¹⁰ The OIG notes that while the unsigned lease accompanying the special use permits calculated rent based on calendar year revenues, the MOAs based rent on fiscal years.

¹¹ The fact that the NBPA relied on estimates to calculate any credits to which it may have been entitled evidences poor oversight and a lack of concern over public dollars. A reasoned approach would have used a "true up" reconciliation.

¹² The OIG used the electricity costs that the NBPA listed in their rent calculations. Supporting documentation for electricity costs, such as monthly invoices, were not provided.

As previously stated, and as reflected in Appendix D, neither DCR nor the NBPA could provide evidence of the NBPA's actual payments to DCR during this period. Additionally, the OIG found no evidence that supports the NBPA's deductions for expenses and no evidence that those deductions were based on verified amounts.¹³

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

As reflected in Appendix C, the Second MOA states that "[T]he HDC [now the NBPA] shall pay the \$45,000 flat fee payment on November 1 of the year expired. The flat fee is to be increased proportionately to represent the percentage increase of any DCR approved increases in fees charged by the HDC for use of the marina slips."

DCR could not provide the necessary financial statements to verify the marina rates. The OIG determined that the NBPA paid DCR \$47,655 in rent in the years from 2017 to 2024 (see Appendix D). Absent information on slip fee charges, DCR cannot demonstrate that the NBPA paid rent consistent with the Second MOA during those years.¹⁴

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.

DCR's lack of payment documentation related to Pope's Island Marina shows that DCR did not have the proper controls in place to ensure that the NBPA paid the correct yearly amounts for the marina.

DCR's Director of Finance stated that the DCR Accounts Receivable Department does not always issue invoices but does expect payment if an entity uses DCR property. In not issuing an invoice, DCR does not record the proper accounts receivable balance in its accounting records. It therefore loses a control that would allow it to track payments and address any outstanding amounts due.¹⁵

On another procedural front, the DCR Permits Department must notify the Accounts Receivable Department when the term of the Second MOA renews, which creates a high risk of unreported or lost revenues. With no automatic renewal function, the accounting system relies solely on communication between two DCR departments.

As discussed in Finding 4, DCR could not provide records verifying the marina's slip fee charges from 2007 to 2024. Those charges should have partially determined the amounts the NBPA

¹³ See previous comments on records retention, *supra*, Footnote 8.

¹⁴ *Id.* The OIG notes that the Second MOA remains in effect. To determine the appropriate rent and to avoid a continuing violation of the records retention law, DCR and the NBPA must document the slip fees charged for the remainder of the contract period.

¹⁵ It is unconscionable that a steward of public resources is not properly assessing accounts receivable balances in a systemic, sustainable way during the course of a long-term agreement.

owed DCR under the Second MOA. DCR was unaware of anyone tasked with verifying these charges and stated that it did not believe the NBPA was providing the financial statements needed to verify them.

With an absence of processes to generate invoices or to verify slip fees as part of calculating the NBPA's rent payments, DCR did not fulfill its fiduciary obligation as a steward of public resources.

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

Under the special use permits and the attached unsigned lease that governed the parties' arrangement between 1994 and 2004, DCR and the NBPA agreed that the NBPA would pay a rent of 15% of its yearly gross revenues for its operation of Pope's Island Marina. In 2000, this rent amounted to \$54,268. In the Second MOA executed in 2006, the parties agreed that the NBPA would pay a flat annual rent of \$45,000, to be adjusted based on slip fee rates. These terms were still in effect in 2024, when the NBPA paid \$47,655 in rent. The NBPA paid \$6,613 less in 2024 than it did in 2000.

By 2006, DCR should have known that it had no controls in place. The lower rent specified in the Second MOA should have been DCR's wake-up call to examine its systems and develop proper controls.

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

A November 4, 1994 letter from Irene Schall, an attorney representing the NBHDC, stated that the NBHDC opened a \$50,000 escrow account with Compass Bank on October 31, 1994, with funds it would expend "in accordance with the existing permit with DEM and with DEM's prior approval and consent." A document from DCR also stated that the NBHDC paid DEM \$46,000 in rent and \$20,000 for the capital repair account¹⁶ in the winter and spring of 1998.

The unsigned lease attached to the special use permits specified that the NBPA was responsible for making a \$20,000 yearly payment into a segregated interest-bearing escrow account solely for capital repairs and improvements. While DCR provided some documentary evidence and emails describing the receipt of at least \$110,000 for deposit into the capital repair account, the OIG calculated that the fund should have received deposits of at least \$190,000. The OIG's figure is based on the first deposit of \$50,000 plus deposits of \$20,000 for each year from 1997 through 2003.

Neither DCR nor the NBPA provided an accounting for these capital repair funds.¹⁷

¹⁶ The OIG did not receive an accounting of the capital repair account or the escrow account with Compass Bank. Based on the descriptions of these accounts in the documentation that was provided, the OIG suspects that these two accounts were, in fact, one account held at Compass Bank for the purpose of capital repairs at Pope's Island Marina. However, neither DCR nor the NBPA provided sufficient documentation to make a definitive determination.

¹⁷ The inability to account for the capital repair funds is a situation not only ripe for fraud, but is one that likely violates state finance law.

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

The unsigned lease attached to the special use permits included a stipulation that the tenant – the NBPA – was to make all necessary repairs, replacements, and renewals at its own expense to keep Pope’s Island Marina in good and clean condition.¹⁸ Likewise, both MOAs clearly stipulated that the NBPA was responsible for maintaining and making repairs to the marina.¹⁹

The NBPA engaged the services of an engineering consulting company, the Pare Corporation, to assess the conditions of the floating docks at Pope’s Island Marina. The Pare Corporation’s April 14, 2014 report estimated that \$650,000 was required for immediate repairs to safely operate Pope’s Island Marina.²⁰ Additionally, the Pare Corporation recommended that corroded panel breakers and power pedestal breakers be replaced over a period of years. The report also found that the floating dock system was nearing the end of its useful life and would require \$4.5 million to replace the system in approximately three to five years. DCR could not provide documentation of the NBPA completing the immediate repairs required to safely operate the marina. Nor did DCR present evidence that the floating dock system was replaced within the three-to-five year window.

In an updated inspection report dated July 2020, the Pare Corporation noted that several of the critical modules of the marina had been replaced, which allowed the marina to extend the useful life of the system to keep the marina operational. However, the Pare Corporation estimated that needed immediate repairs would require approximately \$500,000. The Pare Corporation also reported that an entire replacement of the floating dock system was necessary, with the recommended replacement method costing approximately \$5.5 million. DCR has since confirmed that none of the recommended repairs from the July 2020 updated inspection report have been completed.

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

An unsigned NBPA memo prior to the 2020 boating season explained how the marina is coming to the end of its useful life. The memo’s author wrote that only \$55,000 in repairs was required to make the marina safely operational for the 2020 boating season. According to the memo, the entire marina system would need to be fully replaced at an estimated cost of \$7.4 million. The NBPA memo described that New Bedford generates only about \$275,000 in operating income after deducting annual maintenance and repairs, an amount insufficient to meet ongoing maintenance and repair needs. The memo claimed that the NBPA cannot seek grants from state or federal sources because it is not the owner of the infrastructure. It additionally stated that the NBPA is limited by its enabling

¹⁸ See Appendix A.

¹⁹ See Appendix B and Appendix C.

²⁰ The floating dock condition assessment from Pare Corporation calculated that 16 finger floats would need to be replaced, along with 60 concrete critical main float modules, at a cost of \$120 per square foot. This amounted to \$305,000 for finger float replacement and \$345,000 for concrete module replacement, totaling \$650,000 in estimated repair expenses.

legislation from borrowing or bonding to make necessary capital repairs. The memo made no mention of offers by DCR staff to assist in finding funding sources.

The NBPA memo discussed (1) developing legislation that would give the NBPA title and ownership of the marina, and (2) investing in the reconstruction and replacement of the marina through the \$4.1 million that the Legislature set aside for the marina in the 2014 Environmental Bond Bill and through other state funding.

As stated previously, DCR could not provide documentation to show that the NBPA made the necessary marina repairs over the course of the parties' agreements. In the absence of evidence addressing the NBPA's past performance on repairs, and considering the statements made in the NBPA's memo, the NBPA will likely be unable to maintain Pope's Island Marina in the long term in conformance with the Second MOA currently in effect.²¹

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

As discussed in Findings 2 and 3, DCR could not provide a full accounting of annual rents paid by the NBPA for Pope's Island Marina from 1994 through 2015. This held true for monies the NBPA owed DCR under each of the parties' governing documents – the special use permits, the First MOA, and for almost a decade under the Second MOA currently in effect. Furthermore, as discussed in this letter's other findings, DCR did not have processes to generate invoices, could not produce records of slip fee amounts used to calculate rent, and could not account for tens of thousands of dollars in capital repair funds. The fact that DCR was unable to manage complicated revenue streams and leverage all possible financial benefits for the Commonwealth is a disservice to the public it serves.

Considering DCR's subpar performance in managing the NBPA's operation of Pope's Island Marina over the last 30 years, the OIG is not confident in DCR's ability to oversee a more complicated lease contemplated by the recently issued RFP. The RFP specifies quarterly lease payments based on "10 percent of the annual gross revenues defined as total gross revenues after deduction of up to \$100,000 in documented capital improvements to the [m]arina." The RFP goes on to state that the new lease will require "annual reporting detailing all revenues and expenditures of funds for the prior year, regardless of source." These anticipated provisions collide head-on with DCR's poor track record of calculating rents due, collecting payments, documenting marina repairs, and consistent reporting.

Additionally, as stated in Footnote 21, the NBPA is currently using insurance proceeds to make marina repairs. If the NBPA is the successful RFP bidder, DCR must not allow the NBPA to use these repairs in claiming the \$100,000 rental deduction for capital improvements prescribed by the new lease. The insurance proceeds should not count as the requisite cash contribution that the lease

²¹ DCR stated that the NBPA is in the process of repairing Pope's Island Marina from a 2023 storm with the proceeds from an insurance policy. The total repair from the storm damage is estimated to be approximately \$1 million and includes constructing new timber floats to replace the existing concrete floats. DCR confirmed that the anticipated repairs would cover some of the immediate repairs noted in the Pare Corporation reports from 2014 and 2020 but would not alleviate the need for the eventual replacement of Pope's Island Marina infrastructure.

envisions for the deduction to apply. Similarly, only capital repairs to state-owned property should count toward the deduction, not any improvements made to adjacent property that may not be state-owned.

Conclusions and Recommendations

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, as discussed above, the NBPA is not well situated to invest the funds required to meet the marina's long-term infrastructure needs.

Similarly, DCR's poor accounts receivable, billing, collecting, reconciliation, and records retention practices prevent the OIG from determining whether DCR has received all of the monies it is owed under the current Second MOA.

While providing no opinion with respect to Article 97 of the Amendments to the Massachusetts Constitution, 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.

The OIG is also of the opinion that in order for DCR to conduct a successful procurement for a lessee through the recently issued RFP, the Legislature must be involved in bringing the current engagement to a close. The ownership of areas necessary for the public's reasonable use and enjoyment of Pope's Island Marina may remain unclear.²² Any uncertainty regarding the ownership of these contiguous parcels is likely to dampen interest in bidding, perhaps meaning that the NBPA is the only respondent. Further, in all likelihood, the NBPA owes rent money to DCR, but as this letter makes clear that amount cannot be determined. The Legislature is in the best position to resolve these issues as it brings a logical end to the Second MOA that currently governs the NBPA's operation and maintenance of Pope's Island Marina.

In light of the findings delineated in this letter, the OIG makes the following recommendations.

The Legislature, DCR, and the NBPA should:

1. Negotiate an end to the Second MOA and investigate the ownership of Pope Island Marina's contiguous parcels so that DCR can conduct a successful procurement for the marina's operations, maintenance, and repairs.

²² DCR has previously shared with the OIG that the ownership of facilities adjacent to the marina, such as a building with public toilets and a parking lot, has not been definitively determined. The RFP excludes these facilities from the "lease area." The RFP further states that while Department of Environmental Protection Waterways License No. 1882 (which authorized construction of the marina in the early 1990s) requires that the public have access to these facilities, they are "not for the exclusive use of those accessing the [m]arina."

The NBPA should:

2. Ensure that all existing and future contracts are memorialized in writing, including any new lease that the NBPA may hold for the operation and management of Pope's Island Marina.
3. Understand its contractual obligations, execute those obligations, and maintain appropriate documentation of those actions.
4. Develop and implement best practices and controls for recordkeeping, including records documenting any future financial transactions or maintenance and repair responsibilities related to Pope's Island Marina.
5. Ensure that proper contract administration and management practices, including rules for written documentation, are in place at any other properties the NBPA operates.

DCR should:

For the Second MOA currently in effect, until it expires or is superseded:

6. Verify against the existing terms for the current year and any subsequent year(s) that lease calculations, inclusive of slip fees, are accurate and paid by the NBPA; ensure that the NBPA billings and collections are up-to-date, past due accounts are properly noticed for collections, and write-offs follow proper written policies, procedures, and standards.

For the new marina lease resulting from the RFP:

7. Clearly articulate measurable objectives and the parties' respective responsibilities.
8. Develop recordkeeping controls for documenting all lease payments, including slip fees, and comparing against the lease terms.
9. Implement a process to verify that Pope Island Marina is repaired and maintained consistent with the specifications of the lease.

For any lease of state-owned property:

10. Seek an outside audit of accounts receivable, write-offs, and revenues.
11. Ensure that all parties sign and fully execute lease agreements, with rent based on reasonable points of reference such as current market rates.
12. Procure and implement a lease management system that automates key functions, including a recordkeeping system that implements best practices and controls to reduce the risk of fraud, waste, and abuse of public assets. The system should include effective processes for reconciliations.

Next Steps

It is important that the Commonwealth's governmental bodies and public authorities act as good stewards of public assets. The recommendations herein are informed by the fact that DCR and the NBPA had no effective systems in place to account for contractual revenues, maintenance, and repairs as part of the NBPA's long-term operation and management of Pope's Island Marina.

Within 30 days of receiving this letter, DCR and the NBPA should notify this office in writing of their plans to implement the recommendations herein or of actions already taken.

If you have any questions, please contact me or George A. Xenakis, director of the OIG's Audit, Oversight and Investigations Division, at 617-722-8853 or at George.Xenakis@mass.gov.

Thank you for your attention to the OIG's recommendations.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (via email):

The Hon. Lt. Gov. Kim Driscoll
Kate Cook, Chief of Staff, Office of the Governor
The Hon. Rebecca Tepper, Secretary, EEA
The Hon. Jonathan F. Mitchell, Mayor, City of New Bedford
William McNamara, Comptroller of the Commonwealth
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

Appendix A: Unsigned Lease Attachment to Special Use Permits, 1994 – 2005

The excerpts below from the unsigned lease attached to the special use permits from 1994 to 2006 describe the terms related to the NBPA's obligations for (1) rent payments; (2) payments to a capital repair account; (3) annual reporting of net income; and (4) maintenance and repair of the marina.

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.... 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

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.

...

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.

...

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. ...

Appendix B: First MOA, 2005 – 2006

The excerpts below outline the NBPA's maintenance, repair, and payment obligations under the First MOA.

The HDC [New Bedford Harbor Development Commission, now the NBPA] shall on behalf of, and in cooperation with the Commonwealth and DCR, and in accordance with its statutory authority:

...

E. Properly maintain all improvements and infrastructure and promptly repair and/or replace improvements, equipment and materials as needed.

...

As consideration for the construction by the DCR of the marina and assignment of operation, management and control the HDC agrees to pay to the DCR the following:

(a) for fiscal year 2005, 15% of gross revenues derived from the rental of marina slips... together with 50% of the remaining balance, but not less than \$20,000, in the Popes Island Capital Repair and Replacement account, the remaining balance to be expended by the HDC for necessary repairs and improvements to the marina facility. The HDC shall no longer be required to make deposits into the Popes Island Capital Repair and Replacement Account.

(b) For fiscal year 2006 and beyond; no later than November 30 of each fiscal year, commencing November 30, 2005, a flat fee of \$57,575 to be annually increased on July 1 of each fiscal year by 3%.

...

Appendix C: Second MOA, 2006 – present

The excerpts below outline the NBPA's maintenance, repair, and payment obligations under the Second MOA.

The DCR shall:

...

C. Authorize to the HDC [New Bedford Harbor Development Commission, now the NBPA] a credit to the sum of \$162,222.59 due and owing, (104,647.59 January 1, 2004 to June 30, 2005 and \$57,575.00 from July 1, 2005 to June 30, 2006 total \$162,222.59) by the deduction from gross receipts upon which percentage rent of 15% is based within prior Permits of (a) the proportionate amount of Property/Casualty premiums directly attributable to insurance of the Commonwealth improvements being \$196,712 for a reduction of \$29,507.00, (b) together with the sum of \$196,494.00 for the costs of repairs to Commonwealth improvements due to casualty event being a reduction of \$29,400.00 together with (c) a direct credit of 50% of the actual amounts paid for electrical service to the DCR New Bedford State Pier which as of October 2006 is in the amount of \$48,885.52. The total amount of credits to be applied to sums owing the DCR is \$107,792.52 leaving a balance due of \$54,430.07.

The HDC shall on behalf of, and in cooperation with the Commonwealth and DCR, and in accordance with its statutory authority:

...

E. Properly maintain all improvements and infrastructure and promptly repair and/or replace improvements, equipment and materials as needed.

CONSIDERATION

As consideration for the construction by the DCR of the marina and assignment of operation, management and control the HDC agrees to pay to the DCR the following:

(a) For fiscal year 2007 and each fiscal year thereafter, due, owing and payable no later than November 1 of each calendar year for the previous fiscal year, a flat fee of \$45,000, said flat fee to be increased proportionately to represent the percentage increase of any DCR approved increases in fees charged by the HDC for use of the marina slips. To address delinquencies, accounting errors and unforeseen, but necessary repairs due to casualty events, the amount of sums due and owing arising from any and all prior Agreements and Permits shall be paid by the HDC as follows:

(1) until such time as the City of New Bedford, the HDC or the DCR installs separate electric meters at the New Bedford State Pier, the HDC shall pay for all electric consumption at the State Pier and deduct from the balance of the

\$45,000.00 annual payment 50% of the amounts so paid.

(2) At such time as the utilities are separately metered, the HDC shall pay the \$45,000.00 flat fee payment on November 1 of the year expired. The flat fee is to be increased proportionately to represent the percentage increase of any DCR approved increases in fees charged by the HDC for use of the marina slips.

Appendix D: NBPA's Payments for Pope's Island Marina, 1994 – 2024²³

Year	Governing Agreement	Rent Paid	Capital Repair Paid	Total Payment
1994	Special Use Permit 5/1/1994 - 4/30/1995	No record	\$50,000.00	No record
1995	Unknown if Permit was Extended	No record	No record	No record
1996	Unknown if Permit was Extended	No record	No record	No record
1997	Unknown if Permit was Extended	\$46,000.00	\$20,000.00	\$66,000.00
1998	Special Use Permit 5/1/1998 - 4/30/2001	No record	No record	No record
1999	Special Use Permit 5/1/1998 - 4/30/2001	\$51,653.82	\$20,000.00	\$71,653.82
2000	Special Use Permit 5/1/1998 - 4/30/2001	\$54,267.94	\$20,000.00	\$74,267.94
2001	Special Use Permit 5/1/2001 - 4/30/2006	No record	No record	No record
2002	Special Use Permit 5/1/2001 - 4/30/2006	No record	No record	No record
2003	Special Use Permit 5/1/2001 - 4/30/2006	No record	No record	No record
2004	Special Use Permit 5/1/2001 - 4/30/2006	\$0.00	\$0.00	\$0.00
2005	First MOA Second MOA	\$0.00	\$0.00	\$0.00
2006	First MOA Second MOA	\$54,430.07	\$0.00	\$54,430.07 ²⁴
2007	Second MOA	Unknown	Discontinued	Unknown
2008	Second MOA	Unknown	Discontinued	Unknown
2009	Second MOA	Unknown	Discontinued	Unknown
2010	Second MOA	Unknown	Discontinued	Unknown
2011	Second MOA	Unknown	Discontinued	Unknown
2012	Second MOA	Unknown	Discontinued	Unknown
2013	Second MOA	Unknown	Discontinued	Unknown
2014	Second MOA	Unknown	Discontinued	Unknown

²³ As noted in Footnote 10, *supra*, the unsigned lease accompanying the special use permits calculated rent based on revenues from the preceding calendar year. The MOAs based rent on fiscal years. The NBPA reported its financials to the OIG on a calendar-year basis across the board, including years governed by the MOAs. Reporting this information in a way that is inconsistent with the contract is another indication that DCR and the NBPA have not effectively managed “dollars and cents” recordkeeping.

²⁴ The Second MOA permitted the NBPA to pay \$54,430.07 to cover the years 2004 to 2006.

Year	Governing Agreement	Rent Paid	Capital Repair Paid	Total Payment
2015	Second MOA	Unknown	Discontinued	Unknown
2016	Second MOA	\$24,311.63	Discontinued	\$24,311.63
2017	Second MOA	\$47,655.00	Discontinued	\$47,655.00
2018	Second MOA	\$47,655.00	Discontinued	\$47,655.00
2019	Second MOA	\$47,655.00	Discontinued	\$47,655.00
2020	Second MOA	\$47,655.00	Discontinued	\$47,655.00
2021	Second MOA	\$47,655.00	Discontinued	\$47,655.00
2022	Second MOA	\$47,655.00	Discontinued	\$47,655.00
2023	Second MOA	\$47,655.00	Discontinued	\$47,655.00
2024	Second MOA	\$47,655.00	Discontinued	\$47,655.00