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July 29, 2022

The Honorable Stephanie E. Hulsey  
Judge of the Superior Court  
County of Monterey  
240 Church Street  
Salinas, CA 93901

Re: Moss Landing Harbor District's Response to the 2021-2022 Monterey County Civil Grand Jury Final Report "Sink or Swim: Moss Landing Harbor District"

Dear Judge Hulsey:

This letter will serve as the Moss Landing Harbor District Board of Commissioners' response in regard to the Findings and Recommendations of the 2021-2022 Monterey County Civil Grand Jury Final Report, "Sink or Swim: Moss Landing Harbor District." As requested by the Grand Jury, the District respectfully submits the following responses to the Grand Jury's Findings (1-19) and Recommendation Nos. R1-R13 identified as requiring a response in the cover letter received by the District dated May 2, 2022.

#### Grand Jury Findings

- F1 *MCCGJ found that MLHD conducted a comprehensive Strategic Plan for the District in the 2002 MCCGJ report. The District agrees with this finding.*
- F2 *MCCGJ was unable to verify MLHD completed a comprehensive capital asset reserve study to establish capital reserves and replace aging District facilities over time. The District partially agrees with this finding. The District has not prepared a comprehensive capital asset reserve study. Much of the District's infrastructure is built in-house and replaced on an as-needed basis. Additionally, the District has asset assessments performed on a periodic basis such as the study completed in January of 2022 by Sea Engineering, Inc. Capital reserves are established in annual budgets.*
- F3 *MLHD has not completed a comprehensive maintenance and replacement plan for the harbor facilities. The District partially agrees with this finding. See response to F4.*
- F4 *MLHD maintenance is conducted on an "as needed" basis, reacting to verbal complaints from slip tenants or staff observations. The District partially agrees with this finding. The District agrees that responding to verbal complaints and staff observations are two of several means by which the District responds to maintenance needs. However, the District disagrees with the inference that these are the only means by which maintenance is scheduled or performed. The District plans and includes capital improvement projects as a part of its annual budget process. The District currently has \$1.5 million slated for dock infrastructure improvements in its FY 22/23 budget.*
- F5 *The Sea Engineering, Inc. "Post Tsunami Report," dated February 2, 2022, validated many of the MCCGJ findings. The District partially agrees with this finding. The District agrees that it solicited*

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and received a Post Tsunami Report from Sea Engineering, Inc, and notes that repair work identified in the report had already been commenced at the time the Report was received and that additional funding for repair work identified in the Report was included in the FY 22/23 budget adopted on June 8, 2022. The statement that the report “validated many of the MCCGJ findings” is too ambiguous to agree with.

- F6 *MLHD lacks a formal process for reporting complaints received and/or data on the number, type, and resolution of complaints.* The District wholly disagrees with this finding. The District has a process for receiving complaints and responding accordingly. Most complaints are maintenance-related and result in a work order and repairs as necessary.
- F7 *MCCGJ was unable to verify MLHD maintains a comprehensive maintenance log or database.* The District partially agrees with this finding. The District agrees that it does not keep a maintenance log or database of maintenance projects. However, the District is able to easily access records, such as work orders, concerning maintenance. The District provided the Grand Jury with several years’ worth of maintenance-related documents that were apparently overlooked, discounted or otherwise ignored.
- F8 *MLHD fails to distribute copies of the 60 District Ordinances to all slip tenants. However, the District Ordinances are available on the district website.* The District partially agrees with this finding. As written, the finding makes it sound as if the District has an obligation to provide tenants with copies of the District ordinances. No such obligation exists. The Ordinance Code is 70 pages long and distribution to all tenants would be a waste of paper – the equivalent of asking a city to distribute copies of its municipal code to all residents. The District agrees that the entire Ordinance Code, which is updated on a regular basis, is available on the District website. Copies of the Code are also provided upon request and available for review at the District’s offices.
- F9 *MLHD fails to enforce District Ordinances uniformly.* The District wholly disagrees with this finding. There is absolutely nothing in the Grand Jury’s report that supports this finding. The District is unaware of any tenable complaint or challenge to the District’s enforcement of its ordinances as being uneven or discriminatory.
- F10 *MLHD lacks a formal process for tenants to submit requests and receive written board approval for personal modifications to the docks.* The District wholly disagrees with this finding. The docks are District property for which personal modifications typically are not allowed. If a tenant wants to make a request for such modification, there is a formal permitting process through the District’s Board or General Manager set forth in Chapter 26 of the District Ordinance Code. Additionally, proposed modifications can be raised with staff or the District’s General Manager, all of whom are available and approachable on the docks and at the District’s offices adjacent to the docks.
- F11 *MLHD does not require tenants to procure boat liability insurance.* The District agrees with this statement.
- F12 *MCCGJ observed boats are in disrepair at the harbor that may not be seaworthy.* The District partially agrees with this statement. This finding appears to be speculative. The District notes that vessel appearance does not always mean “not seaworthy.” While the District agrees that at any given time a boat docked in the Harbor may be in disrepair and/or not seaworthy, the District has an outstanding record of removing and demolishing derelict vessels in compliance with procedures established by law.
- F13 *MLHD lacks any pump out facilities, showers, laundry, or paved and stripped (sic) parking areas designated for tenants at North Harbor.* The District partially agrees with this statement. The District acknowledges that it has no pump-out, shower or laundry facilities in the North Harbor. The pump-out, shower and laundry facilities in South Harbor are available to all tenants, whether they be docked at the North or South Harbor. The finding regarding the lack of paved and striped

parking areas is incorrect. The District has a large paved and striped parking lot in the North Harbor available to tenants.

- F14 *MCCGJ observed safety equipment (life rings and ropes) that are in disrepair and require replacement.* The District wholly disagrees with this finding. Life rings and ropes that are weathered from the sun and salt air environment are common in harbor districts, and their effectiveness as life saving tools is not impacted by appearance. The District notes that it was in the process of replacing a number of life rings in the harbor during the time that the Grand Jury was preparing its report but that apparently such action was not observed by the Grand Jury.
- F15 *MCCGJ did not find safety ladders placed appropriately to allow people to get out of the water safely.* The District wholly disagrees with this statement. The District has installed ladders in appropriate locations throughout the Harbor. Ladders are placed in locations to maximize access to persons without obstruction from piles and vessels. The Grand Jury fails to reference reliance upon anyone with safety expertise in making this finding.
- F16 *MLHD BOC fails to consistently post the board agendas outside South Harbor office and does not post in any location of North Harbor.* The District wholly disagrees with this statement. No factual support for this finding is provided in the Grand Jury Report. The District has complied with and/or exceeded all agenda posting requirements set forth in the California Brown Act and posts its agendas at numerous locations throughout the Harbor, including outside the South Harbor Office and at the North Harbor Public Notice Board.
- F17 *MLHD fails to update BOC agendas on the webpage in a timely fashion.* The District wholly disagrees with this statement. No factual support for this finding is provided in the Grand Jury Report. It is also unclear what the finding means by "update." The District has complied with and/or exceeded all agenda posting requirements with respect to its website as set forth in the California Brown Act.
- F18 *MCCGJ verified that current board members had received Brown Act classes, AB 1234 ethics training, and board member receiving governance training from the California Special Districts Association or other qualified organization.* The District agrees with this finding.
- F19 *MCCGJ found MLH experiences recurring failures of the pump-out facility, forcing slip tenants to sail to other harbors to clean out waste. MLH does not post notices of the outages nor when service would be available again.* The District wholly disagrees with this finding. No factual support for this finding is provided in the Grand Jury Report. In the last decade, aside from the inability to use the pump-out facility due to PG&E outages, the pump-out facilities were not in operation on one occasion, when they were damaged when a vessel crashed through the dock. During the repair period the District contracted with a mobile pump truck to provide service to harbor tenants until the repair work was completed. The District is at a complete loss to understand how the Grand Jury could have reached this erroneous conclusion.

### **Grand Jury Recommendations**

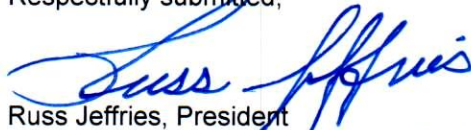
- R1 *By December 31, 2022, MLHD contract with a qualified consultant to complete a comprehensive Business/Strategic/Marketing plan.* The recommendation requires further analysis. The District's initial thought is that a business and marketing plan is unwarranted for what is primarily a working harbor facility. However, the District is willing to entertain the recommendation and will make a decision thereon prior to or at the joint 2022 November/December Board meeting.
- R2 *By December 31, 2022 MLHD should complete a plan to implement the district facilities and replacement plan.* The recommendation requires further analysis. The District's initial thought is that its current means of assessing District facilities and replacing the same when necessary is

sufficient. However, the Board is willing to entertain the recommendation and will make a decision thereon prior to or at the joint 2022 November/December Board meeting.

- R3 *By December 31, 2022 MLHD contract with qualified consultant to conduct a comprehensive maintenance study and develop a replacement plan.* The recommendation requires further analysis. The District's initial thought is that its current means of assessing maintenance and replacement needs is sufficient. Moreover, if the study is warranted, there doesn't seem to be a clear need to retain an outside consultant to perform such work. However, the Board is willing to entertain the recommendation and will make a decision thereon prior to or at the joint 2022 November/December Board meeting.
- R4 *By October 1, 2022, MLHD develop and adopt procedures to track complaints and tenant maintenance requests.* The recommendation requires further analysis. The Board will look into the need for an enhanced process and/or procedure for tracking complaints and maintenance requests and if one is deemed necessary or desired, will review options for adopting such a process. The Board is willing to entertain the recommendation and will make a decision thereon prior to or at the joint 2022 November/December Board meeting.
- R5 *By October 1, 2022, MLHD distribute copies of all District Ordinances to all tenants, current and future.* This recommendation will not be implemented because it is not warranted and is unreasonable. The District's Ordinance Code is available online and copies are available upon request. A copy of the Code is also available for review at the District's offices.
- R6 *By December 31, 2022, MLHD adopt a formal process for tenants to request dock modifications and approval by the board.* This recommendation will not be implemented because it is not warranted. The District already has a process available to tenants for requested dock modifications. As a general matter, the District does not allow modifications to its property. Notwithstanding, any tenant is free to submit a request for a permit for a tenant-specific modification pursuant to the provisions in Chapter 26 of the District's Ordinance Code.
- R7 *By December 31, 2022, MLHD implement an ordinance requiring all slip tenants to show proof of valid boat liability insurance, naming MLHD as additionally insured.* The recommendation requires further analysis. This requirement was considered and rejected by the Board several years ago. All slip agreements require tenants to indemnify and hold the District harmless for damages and/or injuries. Nonetheless, the Board is willing to entertain the recommendation and will make a decision thereon prior to or at the joint 2022 November/December Board meeting.
- R8 *By September 1, 2022, MLHD inspects all existing safety equipment and make repairs and replacements, as necessary.* This recommendation will not be implemented because it is unwarranted. The District already inspects its safety equipment on an ongoing basis, with members of staff observing such equipment while on daily rotation throughout the Harbor. Larger maintenance needs are considered on an annual basis as part of the District's budgeting process.
- R9 *By March 1, 2023, MLHD should require all board members to attend Brown Act Classes, AB 1234 Ethics Training, and Board governance training.* This recommendation will not be implemented because it is unwarranted. The referenced date of March 1, 2023 seems arbitrary. What is the purpose of this recommendation given the fact that Grand Jury Finding F18 found that the Board was currently up-to-date with all training requirements? Training will be provided and tracked as necessary for all Board members on an ongoing basis.
- R10 *By December 31, 2022, MLHD should form a committee with North and South Harbor tenants.* This recommendation will not be implemented because it is not warranted. This recommendation lacks any factual support for the need for the identified committee. The District already has several committees in which participation from tenants located anywhere in the Harbor is welcomed.

- R11 *By September 1, 2022, MLHD should post BOC meetings, agenda packets on the South Harbor Bulletin Board and in a prominent location at North Harbor. MLHD should post BOC meeting minutes in a timely manner to enhance transparency.* This recommendation will not be implemented because it is not warranted and misstates facts. The District is complying with or exceeding all Brown Act requirements concerning agenda posting at the current time. Minutes are posted when completed and are a part of the agenda packets for subsequent meetings, which are also posted on the website.
- R12 *By December 31, 2022, the MLHD install required safety equipment on the docks.* The recommendation will not be implemented because it is unwarranted. The District believes that it already has all necessary and adequate safety equipment installed on the docks.
- R13 *MLHD should ensure continuous operation of pump-out facilities available at the harbor.* This recommendation will not be implemented because it is unwarranted. Continuous operation of the pump-out facilities has already been in effect for more than a decade. The recommendation appears to be based on the assertion that pump-out facilities have been in disrepair or out of operation for significant periods of time in the Harbor. The Grand Jury Report provides no factual basis for this conclusion and the District would assert that this Grand Jury finding is completely erroneous.

Respectfully submitted,



Russ Jeffries, President  
Board of Harbor Commissioners of the Moss Landing Harbor District