



Office of the City Manager

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront
 Subject: Loan Application: Dock Replacement at the Berkeley Marina

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to sign a loan agreement with the California Department of Boating and Waterways and to accept the funds for a loan not to exceed \$5,500,000 for replacement of D & E docks at the Berkeley Marina.

FISCAL IMPACTS OF RECOMMENDATION

A summary of project costs and expected offsetting revenues and savings is shown in Attachment 1. The loan terms and payment schedule are detailed in Attachment 2. At the interest rate of 4.5%, the City will pay \$342,000 annually in debt service (principal and interest). All payments will be made from the Marina Fund (Fund 608).

Until recently, the City carried two loans from the Department of Boating & Waterways (DBAW) for the dock replacements and associated marina infrastructure improvements at B & C and H & I docks. In FY17, the City paid off one of these loans, reducing annual debt service by \$160,712. Staff expects that inflation-based marina fee adjustments over the thirty-year life of the new loan will partially offset the increase in debt service to pay off the loan. Staff estimates that the proposed dock and finger improvements, as well as returning currently un-rentable slips to the market, will increase annual revenue by at least \$185,000. Once the replacement project is completed, total revenue from D & E docks is estimated to exceed \$400,000.

CURRENT SITUATION AND ITS EFFECTS

Docks D & E are currently the oldest docks in the Berkeley Marina, and have deteriorated significantly. Nearly half of all slips on these docks cannot be rented due to poor condition. In recent years, the deterioration has accelerated, and in the last month alone, winter storm damage to D & E docks and piles have rendered an additional 6 slips un-rentable. The un-rentable slips on D & E dock represent more than 80% of all un-rentable slips in the Marina, and represent a loss to the Marina Fund of more than \$150,000/year. Furthermore, Docks D & E do not meet current Americans with Disabilities Act (ADA) standards. Therefore, these docks need to be replaced.

On [January 23, 2018](#), Council authorized the City Manager to apply for a \$5,000,000 loan from the State Department of Boating & Waterways for the replacement of D & E

docks, (Resolution 68,296–N.S.). The City submitted the loan application in February 2018. In December 2019, the State notified City staff that the amount available for a loan had increased to \$5,500,000.

On February 14, 2020, the State Boating & Waterways Commission reviewed and approved the City's application. They noted that the Marina Fund does not currently meet the income/expense ratio required by the State Department of Boating and Waterways and is not forecasted to do so. Their approval included a condition that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from any legally available source, for every year until the loan is fully repaid.

The total project cost is estimated to be \$6,000,000, with \$500,000 to be funded by Measure T1¹ and the remaining \$5.5M to be funded by the loan.

BACKGROUND

The City has approximately 16 large dock systems in the Berkeley Marina, serving up to 1,000 boats. Since these docks were constructed in the 1960s, nearly all of them have been rehabilitated or replaced, except for D & E docks. These Docks were initially slated for replacement in 2000 when the City received a \$7,000,000 loan from the Department of Boating & Waterways to replace Docks A through E, H & I Docks, and also to construct a new restroom facility at B & C docks. D & E docks were eventually excluded from that project due to rising construction costs that exceeded available funding.

ENVIRONMENTAL SUSTAINABILITY

Investment in Marina infrastructure has a direct impact on the sustainability of the Marina Fund, which funds important community environmental programs provided by the Nature Center that educate youth to the natural environment throughout the Berkeley Waterfront.

RATIONALE FOR RECOMMENDATION

Docks D & E cannot be repaired due to age and deterioration and therefore require replacement. The Marina Fund does not have adequate reserves to fund the dock replacement project in a single year. The DBAW loan provides the upfront funding for this project at competitive interest rates, allowing the City to amortize the cost of the docks over a 30-year loan term.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700

Christina Erickson, Deputy Director, Park, Recreation & Waterfront, 981-6703

Attachments:

1. Summary of Project Costs and Revenue Sources
2. Resolution

¹ See Resolution 69,657–N.S., City Council's December 2020 authorization of Phase 2 Measure T1 projects.

Exhibit A: Loan Recitals

Exhibit B: Small Craft Harbor Construction Loan and Operation Agreement

Exhibit C: General Terms and Conditions

Exhibit D: Berkeley Marina Loan Feasibility Report

Exhibit E: Marina Operations, Maintenance, and Capital Outlay Loan Requirements

ATTACHMENT 1

Division of Boating & Waterways
Dock Replacement Project
Summary of Project Costs & Revenue Sources

Summary of Project Costs & Funding

Total Project Cost:	\$	6,000,000
<i>Amount funded by Measure T1</i>	<i>\$</i>	<i>500,000</i>
<i>Amount funded by DBW Loan</i>	<i>\$</i>	<i>5,500,000</i>

Summary of Loan

Loan Value	\$	5,500,000
Annual Payment (Principal + Interest)	\$	342,000

Summary of Revenue Sources

New Revenue or Expected Savings	Amount	
Savings from prior DBAW loan paid off in FY17	\$	160,712
Additional berth revenue from increase in D&E occupancy from 45% to 80%	\$	185,000
Annual Revenue Available to Repay Loan:		345,712

RESOLUTION NO. ##,###-N.S.

LOAN AGREEMENT WITH CALIFORNIA DEPARTMENT OF BOATING & WATERWAYS FOR REPLACEMENT OF D & E DOCKS AT THE BERKELEY MARINA

WHEREAS, the State Department of Boating and Waterways provides loans to cities, counties and districts for the development of small craft harbor facilities; and

WHEREAS, the City of Berkeley needs to replace D & E Docks at the Berkeley Marina in order to meet the needs of the boating public in Berkeley and the surrounding area and to make these facilities comply with the access requirements of the Americans with Disabilities Act; and

WHEREAS, the City has conducted a feasibility study which has found the proposed project to be feasible and economically justified; and

WHEREAS, the City of Berkeley has requested, and the State Department of Boating and Waterways has approved a \$5,500,000 loan; and

WHEREAS, the annual debt service payments will be made from the Marina Fund (Fund 608). However, in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from any legally available source, for every year until the loan is fully repaid.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to sign the loan agreement for \$5,500,000 and accept the loan for the replacement of D & E docks at the Berkeley Marina.

Attachments:

Exhibit A: Loan Recitals

Exhibit B: Small Craft Harbor Construction Loan and Operation Agreement

Exhibit C: General Terms and Conditions

Exhibit D: Berkeley Marina Loan Feasibility Report

Exhibit E: Marina Operations, Maintenance, and Capital Outlay Loan Requirements

LOAN RECITALS

1. WHEREAS, Section 70.2 et seq. of the Harbors and Navigation Code authorizes the Department to make loans to cities, counties and districts to design, construct, and improve small craft harbors.
2. WHEREAS, the Department has agreed to loan up to Five Million Five Hundred Thousand Dollars (\$5,500,000.00) for marina construction at the project area, collectively the (“Loans”).
3. WHEREAS, the legal description and site map of the project area are attached hereto as Exhibit F and made a part of this agreement.
4. WHEREAS, in order to induce the Department to make and enter into the loans, Borrower has agreed to execute and/or authorize the following collateral documents as security for repayment of the loans.
 - (a) A Collateral Assignment of Rents and Leases for the Project Area;
 - (b) A Security Agreement, and;
5. WHEREAS, the Borrower and Department have agreed that ALL of the following conditions must be met prior to liquidation of any loan funding:
 - (a) No later than March 31, 2021, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund achieved a 1.25 debt service coverage ratio (DSCR) in the fiscal year ending June 30, 2020. This process must be repeated each subsequent March 31, confirming a 1.25 DSCR for the prior fiscal year, until construction has begun.

- (b) Before construction loan funding will be made available, and no later than March 31, 2022, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund's ratio of operating income to operating expenses in the fiscal year ending June 30, 2021 was at or above the projected ratio shown in Tables 3 and 3A of the project feasibility report, Exhibit D, pages 16 and 17. This process must be repeated each subsequent March 31, confirming the income/expense ratio for the prior fiscal year met or exceeded the projections in this report, until construction has begun.
 - (c) Before construction loan funding will be made available, and no later than December 31, 2021, the City must send DBW confirmation that all project permits have been obtained.
 - (d) The Berkeley City Council shall adopt a resolution accepting the loan funds. The language of the resolution shall acknowledge the Marina Fund does not currently meet the income/expense ratio required by DBW and is not forecasted to do so, and the language of the resolution must further state that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from any legally available source, for every year until the loan is fully repaid. This condition may be withdrawn if and when the City demonstrates meeting the required income/expense ratio and debt service coverage ratio for five consecutive years.
6. NOW THEREFORE, the Department and the Borrower desire to more clearly set forth their agreement and mutually agree to the terms and conditions of the Small Craft Harbor Construction Loan and Operation Agreement, Exhibit B, as follows:

**SMALL CRAFT HARBOR
CONSTRUCTION LOAN AND OPERATION AGREEMENT**

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**SMALL CRAFT HARBOR
CONSTRUCTION LOAN AND OPERATION AGREEMENT**

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ARTICLE 1 – PROMISE TO PAY

- A) For value received, the Borrower promises to repay the sum of principal disbursed pursuant to this (STD 213) Agreement together with interest on that amount at the rate set forth below until fully repaid.

ARTICLE 2 – DEFINITIONS

- A) “Account”: An interest bearing account to be established by the Borrower for the deposit of Loan funds; such account is to be designated the Department of Parks and Recreation, Division of Boating and Waterways - *Marina Development Account* (see Article 6 – Disbursement of Loan).
- B) “Borrower”: The Borrower identified on the Standard Agreement STD 213.
- C) “CEQA”: The California Environmental Quality Act.
- D) “Collateral”: The Gross Revenues (including, without limitation, Excess Revenues), the Enterprise Fund, the Reserve Fund, the Account, the proceeds of the Loan.
- E) “Commission”: The Boating and Waterways Commission.
- F) “Date of Acceptance”: The date specified on the Project Completion Certification.
- G) “Default”:
- 1) The failure of the Borrower to make any payment of principal or interest on the Loan required by this Agreement.
 - 2) The failure of the Borrower to make any other payment required by this Agreement within thirty (30) days of the due date of the payment.
 - 3) The failure of the Borrower to comply with any requirement in section Article 12 of this Agreement upon receipt of written notice from the Department specifying such failure.
 - 4) The failure of the Borrower to comply with any other requirement of this Agreement within ninety (90) days of receipt of written notice from the Department specifying such failure.
 - 5) The provision of false representations or false warranties by the Borrower in response to any obligations under this Agreement.
 - 6) The failure of Borrower to conduct appropriate proceedings in good faith to contest any levy or proceeding against the Collateral or Borrower’s interest therein; or
 - 7) The filing of a petition by the Borrower under the provisions of the Bankruptcy Code, or the failure of the Borrower to conduct appropriate proceedings in good

faith to contest a bankruptcy filing by a third party when such action affects the Collateral.

- H) "Department": The Department of Parks and Recreation, Division of Boating and Waterways.
- I) "Effective Date": The Effective Date of this Agreement is either the mutually agreed upon Project start date or the approval date by the Department of General Services, whichever is later. In cases when DGS approval is not required, this Agreement is of no force or effect until the date of the last signature. No work shall commence until the Effective Date.
- J) "Enterprise Fund": The fund established by the Borrower under Article 13.
- K) "Excess Revenues": (formerly Surplus Revenues) The portion of Gross Revenues exceeding the sum of (1) unpaid due or delinquent Loan repayments, (2) required transfers to the Reserve Fund, and (3) operation and maintenance expenses (including those paid from the Reserve Fund) of the Project Area.
- L) "Exhibit D": The feasibility report exhibit that presents the proposed project in "concept" form only. The actual Project layout shall be determined by the Borrower and the engineer of record (to be determined) during the design process taking actual site conditions and public safety into account. The Project must meet the scope, cost and intent of this report and shall conform to Department guidelines.
- M) "Gross Revenues": Total revenues, before expenses are deducted, including any (i) rents, profits, interest, and any other income and receipts and (ii) concession or other contract operations income (but excluding gross revenues to a concessioner) received by Borrower for goods, services, facilities, and leaseholds provided or located within the Marina or otherwise derived by the Borrower from operation of the Marina. For purposes of clarification, Gross Revenues also include any sales of stocks, lands, or other property owned by Borrower and located within, or used for operation or maintenance of, the Project Area. Annual Gross Revenues are estimated in Table 3 of Exhibit D (see line item "Sub-Total Revenues").
- N) "Loan": The Loan described in Exhibit D.
- O) "Project": The construction, improvement, acquisition, or maintenance of small craft harbors, related facilities, or connecting waterways described in Exhibit D.
- P) "Project Area": The real property, and improvements thereto, identified in Exhibit F.

- Q) "Project Completion Certification": A fully executed Notice of Completion, or equivalent, which states the Borrower has accepted the Project as complete on a specific date (Date of Acceptance).
- R) "Project Costs": Contract, equipment, labor, material and construction costs that are incurred by the Borrower for the purpose of completing the Project. However, Project costs incurred:
 - 1) For indirect or overhead charges may only be reimbursed with prior written approval by the Department and may be no greater than the combined maximum budget allocated for *Engineering, Inspection, and Permits* Cost as described in Exhibit D (Feasibility Report, Cost Estimate Table);
 - 2) For engineering, inspection, and management services provided by Borrower or Borrower's personnel may only be reimbursed with prior written approval of Department; and
 - 3) Shall not include any expenses incurred prior to the Effective Date of this Agreement.
- S) "Reserve Fund": A separate and independent fund for the exclusive purpose of providing extraordinary, non-routine maintenance, repair or replacement during the term of this Agreement.
- T) "Unpaid Balance": Total outstanding debt, including principal and accumulated interest.

ARTICLE 3 – BORROWER COVENANTS

- A) The Borrower certifies that the obligation created by this Agreement will not create an indebtedness or liability contrary to the provisions of Section 18 of Article XVI of the Constitution of the State of California. The Borrower certifies that neither the Borrower nor its City Council has received a protest of the Loan signed by the owners of one-half or more of the assessed valuation of taxable property in the Borrower's jurisdictional boundaries.
- B) The Borrower certifies that the Borrower has title to, or adequate interests in, the Project Area. Adequate interests include, but are not limited to, the following:
 - 1) Access to the Project Area by a maintained public way;
 - 2) A right of passage over a waterway, open to the public, between the Project Area and navigable waters; and
 - 3) Easements or other rights of way outside the Project Area sufficient to provide utilities and services to the Project.

- C) The Borrower agrees to incur no additional indebtedness payable from or secured by Collateral without first obtaining the written consent of the Department.
- D) The Borrower represents and warrants that there is no encumbrance, lien, easement, license, title, cloud or other interest that may interfere with the Project Area or use thereof by the public. The Borrower represents and warrants that there is no encumbrance or lien on the Collateral except as permitted by this Agreement.

ARTICLE 4 – BUDGET CONTINGENCY

- A) Only funds that have been appropriated by the Legislature and approved for expenditure on the Project by the Department on or before the Effective Date of this Agreement are authorized for disbursement through this Agreement.
- B) In the event that the Legislature or Department, for any reason, does not approve sufficient funding for this project, or should the Borrower be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, and provided that Borrower has not accepted any loan funds, Department shall have no liability to pay any funds whatsoever to Borrower or to furnish any other consideration under this Agreement and Borrower shall not be obligated to perform any provision of this Agreement; this Agreement shall be of no further force and effect.
- C) In the event that the Legislature or Department does not approve sufficient funds to complete the Project, or should the Borrower be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, and Borrower has drawn loan funds:
 - 1) Borrower shall repay all drawn loan funds plus the interest (as specified in Article 8.B) accrued to date of said return within ninety (90) days of the end of the fiscal year that such approval is denied; or
 - 2) Borrower shall complete the Project within the scheduled timeline using Borrower's own funds; or
 - 3) Department and Borrower may agree upon a reduced scope version of the Project to be completed within the scheduled timeline and all funds in excess of those previously appropriated necessary to complete the Project shall come from Borrower; or
 - 4) Department and Borrower may, within ninety (90) days of knowledge of such denial, agree that the expenditure of such funds toward the Project constitutes

construction completion. The date of such agreement shall become the Date of Acceptance of the Project.

ARTICLE 5 – TERM OF AGREEMENT

- A) This Agreement, subject to any provisions for prior termination as specified in Article 25 of this exhibit, shall remain in full force and effect until the Borrower repays the Loan and all accumulated interest in full, and all other amounts owing to the Department under this Agreement, or this Agreement is otherwise terminated.
- B) This Agreement may be extended, amended or cancelled, but only upon the written agreement of the parties.

ARTICLE 6 – DISBURSEMENT OF LOAN

The Department shall provide a Loan to the Borrower in the maximum amount stated on STD 213 line 3 of this Agreement; however:

- A) No funds shall be disbursed for work performed prior to the Effective Date of this Agreement.
- B) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower demonstrates to the satisfaction of the Department that the Borrower has title to, or adequate interests in, the real property comprising the Project Area.
- C) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower demonstrates that it has all acquired permits necessary to construct and operate the Project.
- D) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower demonstrates that it has satisfactorily complied with California Environmental Quality Act (CEQA) for the Project.
- E) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower has fully executed all required security agreements which may include but is not limited to a Collateral Assignment of Rents and Leases and Security Agreement; such security agreements are recorded if necessary; and original or conformed copies of such recorded documents are received by the Department.
- F) Borrower shall provide proof that it has established and is contributing monthly to the Reserve Fund account before any Loan funds will be disbursed as the Department sees fit.
- G) Loan disbursements to cover Project Costs shall be made in arrears as follows:

- 1) Borrower shall request a Loan disbursement at least quarterly, when applicable, but not more frequently than monthly, for any and all reimbursable expenses incurred during that period, using the form provided by the Department unless Borrower has a form otherwise approved by the Department in writing. Paid invoices, including proof of payment, or other evidence of Borrower's payment of Project Costs must accompany Loan disbursement requests.
 - 2) Loan disbursement requests shall be submitted in triplicate hardcopy to the Department in a form satisfactory to the Department.
 - 3) In the event no reimbursable expenses were incurred during a quarter, the Borrower shall report to the Department of any progress made on the Project, or explanation of no progress made on the Project, at least quarterly, but not more frequently than monthly.
 - 4) The Borrower shall record such disbursements in the Account.
 - 5) The Department shall withhold from each Loan disbursement an amount equal to ten Percent (10%) of each disbursement until the Department has accepted the Project as complete, approved all Project Costs, and all stop notices, other liens or mechanic's liens have been released.
 - 6) Borrower shall request final Loan disbursement no later than sixty (60) days following the Date of Acceptance of the Project by the Borrower.
- H) The Borrower shall provide the following to the Department within sixty (60) days of the Date of Acceptance:
- 1) A Project Completion Certificate (or equivalent);
 - 2) An accounting of all Loan funds; and
 - 3) As-Built plans and specification on CD-ROM or DVD.
- I) The Department may withhold any Loan disbursement during the continuance of any Default or any Borrower failure to comply with any of the provisions of this Agreement.

ARTICLE 7 – DESIGN AND CONSTRUCTION OF PROJECT

- A) The Borrower shall complete the Project no later than February 1, 2023.
- B) The Borrower shall, within sixty (60) days of approval of this Agreement, provide the Department with a Project schedule showing the proposed dates of the following Project phases or milestones:
 - 1) Beginning and ending dates of Project design consultant selection by Borrower;
 - 2) Submission of the consultant services agreement to the Department for approval;

- 3) Beginning and ending of Project design;
 - 4) Submission of plans and specifications to the Department for approval at 30%, 60%, 90% and 100% completion;
 - 5) Beginning and ending dates of Borrower advertising of Project for bids;
 - 6) Project bid opening date;
 - 7) Submission of the construction Agreement to the Department for approval;
 - 8) Beginning and ending dates of Project construction;
 - 9) Acceptance of Project by the Borrower; and
 - 10) Submission of a Project Completion Certification to the Department.
- C) The Borrower shall obtain from the Department advance written approval of the following:
- 1) All bid documents prior to advertisement;
 - 2) All contracts prior to award;
 - 3) All change orders of \$10,000 or more, for any work performed under this Agreement; and
 - 4) All changes to project schedule discussed in Subpart B of this Article, of 60 (sixty) days or more.
- D) All architectural engineering contracts for plans and specifications shall require that the plans and specifications:
- 1) Be prepared by persons licensed by the State of California to undertake the type of design required by the Project (engineer's/architect's certificate number to appear on construction contract design documents);
 - 2) Be prepared in conformance with the most recent version of the Department of Boating and Waterways' *Layout, Design and Construction Handbook for Small Craft Harbors*;
 - 3) Be submitted to the Department and Borrower in 11" X 17" hardcopy and on CD or DVD in full sized and 11" X 17" PDF format. Specifications shall also be submitted in hardcopy and in PDF format;
 - 4) Become the property of the Borrower;
 - 5) Provide for all Project facilities set forth in Exhibit D; and
 - 6) Provide for shore side facilities for removing waste from vessel holding tanks in accordance with the Harbors and Navigation Code section 654.1.
- E) All construction contracts for the Project shall:
- 1) Be awarded in accordance with all applicable laws and regulations;

- 2) Contain the following clause: "The Department of Parks and Recreation, Division of Boating and Waterways and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project Area.";
 - 3) Contain a clause stating that the Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship;
 - 4) Contain a clause that the construction contractor shall comply with all air pollution and environmental control rules, regulation, ordinances and statutes which apply to the Project and any work performed pursuant to the construction agreement;
 - 5) Require that the Project be constructed according to the plans and specifications prepared for the Project, and that quality control shall be performed, and compliance with specifications shall be verified, by qualified professionals selected by the Borrower or Borrower's representative; and
 - 6) Shall contain the requirements of Article 14 Liability and Fire Insurance and Article 24 Liability of this Agreement.
- F) Prior to the commencement of the construction of the Project, the Borrower shall cause the contractor and a corporate surety acceptable to the Department to furnish in favor of the Borrower and the Department, as their interests may appear, bonds or other security interests as allowed pursuant to Public Contract Code sections 10263 and 22300 in the minimum amounts indicated below:
- 1) Faithful performance – one hundred percent (100%) of the total agreement bid price.
 - 2) Labor and materials – one hundred percent (100%) of the total agreement bid price.
- G) The Borrower's personnel and construction of the Project shall be under the supervision of qualified inspectors. Inspection reports and related inspection data shall at all

reasonable times be accessible to the Department personnel, and on request copies of such reports and data shall be provided to the Department by the Borrower.

- H) The Borrower's obligation to pay the principal of, and interest on, the Loan are special limited obligations payable solely from Gross Revenues and other Collateral pledged under this Agreement. But the Borrower's obligation to pay the principal of, and interest on, the Loan not paid when due are also payable from any other legally available funds of the Borrower, subject to appropriation by the Borrower of such other funds. If the immediately preceding sentence is held or deemed to be, or is in fact, illegal, inoperative or unenforceable, all of the other provisions in this Agreement shall nonetheless remain unaffected and fully valid, operative, and enforceable.

ARTICLE 8 – LOAN REPAYMENT; LIMITED OBLIGATIONS

- A) Repayment of the Loan shall begin on August 1 immediately following the first Loan disbursement as follows:
- 1) Interest only payments shall be made beginning on August 1 immediately following the first Loan draw and be made annually until drawdown is completed. However, upon written agreement between Department and Borrower, Borrower may forego interest-only payments.
 - 2) Repayment of principal and interest shall begin on August 1 immediately following the final draw and be made in thirty (30) annual, approximately equal payments. However upon written agreement between Department and Borrower, repayment of principal and interest may begin on the succeeding August 1.
 - 3) All payments are due on August 1 of each year, and late if not received by the Department by August 15 of each year.
- B) Interest shall be compounded continuously at the rate of four and five-tenths percent (4.5%) per annum on the Unpaid Balance. Interest compounds on the Unpaid Balance of the Loan commencing with the warrant date of each disbursement of Loan funds by the Department.
- C) Repayment of the Loan shall be made from Project Area Gross Revenues and, per Harbors and Navigation Code section 71.8(b) shall be made a priority payment made prior to any other expenditure from Gross Revenues. However, to the extent that the revenues generated within the Project Area are insufficient to repay the Loan, the Borrower shall make every effort, subject to section 18 in Article XVI of the California

Constitution, to assign and collect other revenues, and/or levy taxes as necessary to pay each Loan payment.

- D) The Department will provide a repayment schedule to Borrower and may make adjustments in the schedule of annual Loan payments to reflect changes of principal or interest such as prepayments that have been made.
- E) The Borrower at its option may at any time make prepayment of all or part of the principal on the Unpaid Balance; however, such prepayment does not replace any normally scheduled payment unless the Department receives payment in full.
- F) If any payment made by the Borrower is less than the amount required under this Agreement, then such payment shall first be applied to reduce any accrued unpaid interest due on the Loan, and the balance shall be used to reduce the principal of the Loan.
- G) The Borrower's obligation to pay the principal of, and interest on, the Loan not paid when due are also payable from any other legally available funds of the Borrower, subject to appropriation by the Borrower of such other funds. If the immediately preceding sentence is held or deemed to be, or is in fact, illegal, inoperative or unenforceable, all of the other provisions in this Agreement shall nonetheless remain unaffected and fully valid, operative, and enforceable.

ARTICLE 9 – DEPARTMENT'S REMEDIES ON DEFAULT

Upon the occurrence of Default, the Department may:

- A) Exercise all rights and remedies accorded the Department in the security agreements signed by Borrower including, but not limited to, the right to take possession of the Project Area.
- B) Exercise all rights and remedies accorded to the Department by law, including, but not limited to, those rights established in the Harbors and Navigation Code.
- C) Declare the Loan (including, without limitation, all accrued interest) immediately due and payable without further demand or notice.
- D) Recover the defaulted loan as specified in section 71.8(d) of the Harbors and Navigation Code.

ARTICLE 10 – RIGHT OF THE DEPARTMENT TO TAKE POSSESSION OF THE PROJECT AREA

The Department may take possession of the Project Area if the Borrower is in Default. The Department shall, after the exercise of such option, construct, operate or maintain the Project

Area for the account of the Borrower until the Loan is repaid in full; the revenues received from the Project Area during such time shall be applied first to reduce the interest and second to reduce the principal of the Loan and then to cover any other expenses incurred in the operation of the Project Area.

ARTICLE 11 – RIGHT OF ENTRY BY THE DEPARTMENT

The Department and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project or as otherwise necessary for the Department to exercise its rights under this Agreement.

ARTICLE 12 – LAND CONTROL

The Borrower shall not sell, exchange, transfer, mortgage, or hypothecate in any manner all or any portion of the Marina or required therewith, without the advance written approval of the Department.

ARTICLE 13 – OPERATION AND MAINTENANCE OF PROJECT

- A) The Borrower shall establish berthing rates, subject to the approval of the Department, within the Project Area sufficient to comply with sections 71.4 and 71.8 of the Harbors and Navigation Code.
- B) The Borrower shall annually report (due June 1 if Borrower's fiscal year runs January 1 through December 31, or due December 1 if Borrower's fiscal year runs July 1 through June 30) to the Department the following:
 - 1) Amounts deposited into the Reserve Fund account;
 - 2) Amounts withdrawn from the Reserve Fund account;
 - 3) Marina Gross Revenues;
 - 4) Uses of funds withdrawn from the Reserve Fund account;
 - 5) Brief assessment of the condition of the Marina;
 - 6) Anticipated expenditures from the Reserve Fund account over the next five years;
 - 7) Audited official report on status and activity of the Reserve Fund during the fiscal year; and
 - 8) Audited annual financial statements including the following:
 - a) Balance Sheet;
 - b) Income Statement; and
 - c) Cash Flow Statement.

- C) Project Area electrical systems that extend into or over water shall be inspected biennially, by a licensed electrical contractor or electrical engineer for compliance with the safety-related provisions of the California Electrical Code (Part 3 of Title 24 of the California Code of Regulations).
- D) The Borrower shall each year conduct a survey of berthing charges that prevail in the same market area as the Marina and shall transmit the results of the survey to the Department by April 1 of the following calendar year.
- E) The Borrower shall operate the Project Area as or in conjunction with a small craft harbor.
- F) The Borrower shall:
 - 1) Continuously operate in an efficient and economical manner all Project Area facilities acquired, constructed, improved, maintained, or completed, in full or in part, as a result of the Loan;
 - 2) Make all repairs, renewals and replacements necessary so that the Project Area at all times meets the minimum standard of maintenance set forth in the Department of Boating and Waterways "*Marina Operations, Maintenance, and Capital Outlay Loan Requirements*" which is identified as Exhibit E of this Agreement;
 - 3) Operate, maintain and control the Project with its own employees; however, the Borrower may lease portions of the Project Area, provided that such leases are awarded in accordance with Harbors and Navigation Code sections 72 or 72.2, and provided that such leases do not include any berthing systems or any other revenue producing items paid for by the Loan;
 - 4) Make all Project Area facilities available to all on equal and reasonable terms;
 - 5) Make all Borrower's books, papers, records and accounts relative to the Project Area open and available for inspection and audit by the Department or any authorized representative of the Department during normal business hours; and
 - 6) Subject to section 71.8, subdivision (d), of the Harbor and Navigation Code, periodically fix, prescribe, and collect fees, rentals, or other charges for services and facilities within the Marina sufficient to produce Gross Revenues adequate for payment of the following in the order set forth:
 - a) All installments of principal and interest on the Loan when due;
 - b) All expenses of operation, maintenance, and repair of facilities in the Project Area; and

- c) All transfers to the Reserve Fund as and when required under Article 13, paragraph (J).
- G) The Borrower shall establish an Enterprise Fund to account for Marina revenues and revenues pledged as collateral and expenditures enumerated in section 71.8 of the Harbors and Navigation Code. The Enterprise Fund shall be established before the first loan draw is requested.
- H) Borrower shall deposit Excess Revenues in an interest-bearing account. Excess Revenues are restricted as described in section 71.9 of the Harbors and Navigation Code. Borrower shall obtain prior written approval from the Department before expending excess Revenues. Excess Revenues, and interest accumulated thereon, provide partial security for the loan.
- I) The Borrower shall establish a Reserve Fund and shall deposit monthly into the Reserve Fund an amount equal to two percent (2%), or a higher percentage determined by the Borrower, of Project Area Gross Revenues received by the Borrower during the preceding calendar month.
 - 1) Borrower shall set up an individual account in its Treasurer's Office, which account shall be the Reserve Fund depository. The Borrower shall use deposited funds for extraordinary, non-routine maintenance, repair and/or dredging of the Project throughout the term of this Agreement.
 - 2) Borrower's expenditures from the Reserve Fund shall be consistent with "Department of Parks and Recreation, Division of Boating and Waterways "Marina Operations, Maintenance, and Capital Outlay Loan Requirements."
 - 3) All expenditures from the Reserve Fund shall require prior written approval of the Department. Written approval may include, but not be limited to, e-mail approval. Invoices or other evidence of expenditures must accompany a request for Department approval.
 - 4) Any earnings accrued in the Reserve Fund shall be retained in the Reserve Fund.
 - 5) After payment in full of all amounts owing to the Department under this Agreement, the Borrower may withdraw moneys in the Reserve Fund for any lawful purpose. However, Borrower shall not be eligible for future Department funding unless and until an amount equal to the remaining funds is first expended toward the Project.

ARTICLE 14 – LIABILITY AND FIRE INSURANCE

A) The Borrower shall maintain in full force and effect during the term of this Agreement the following insurance in the minimum amounts and kinds specified below:

Bodily Injury or Death:	\$1,000,000 each person
	\$1,000,000 each occurrence
Property and Product Damage:	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Fire Insurance:	90% of the full insurable value of all insurable components of the Project.

B) All policies shall contain the following endorsement:

The State of California, its officers, agents, employees and servants are hereby declared to be additional insureds under the terms of this policy, as to activities of both the Borrower and the Department in respect to the Project, and this policy shall not be cancelled without thirty (30) days prior written notice to the Department.

C) The Borrower shall continuously insure the Project Area through one of the following alternatives:

ALTERNATIVE I

- 1) The Borrower agrees that all contracts between it and the contractor (or contractors) responsible for construction of the Project shall contain a clause which requires the contractor(s) to obtain insurance in the minimum amounts and kinds specified above in Article 14, subpart A.
- 2) The Borrower prior to acceptance and operation of the Project shall procure and maintain in full force and effect during the remainder of the term of this Agreement insurance in the amounts and kinds specified above in Article 14, subpart A.

ALTERNATIVE II

- 1) The insurance requirements specified above in Article 14, subpart A., may be satisfied to the extent that the Borrower can provide comparable protection for the Borrower and the Department by virtue of the Borrower's participation in any "risk management" plan, self-insurance program, insurance pooling arrangement,

or any combination of these, provided that the protection plan has been approved by the Department.

- D) The Borrower agrees that all contracts between it and the designer (or designers) responsible for design and preparation of plans and specifications of the Project shall contain a clause requiring said designer(s) to obtain Architect's Professional Liability (errors and omissions) Insurance in the amount of \$1,000,000.
- E) Copies of any policy or policies, including any new or renewal policy, shall be in a form satisfactory to the Department. Copies of such policy or policies shall be submitted to the Department at least twenty (20) days prior to the effective date or dates thereof.
- F) Loss under any fire insurance policy shall be payable to the Department for deposit in an appropriate trust fund with the State of California. The proceeds may be paid to the Borrower upon the Borrower's application for the reconstruction of the destroyed facilities.
- G) The Department shall not be responsible for the payment of any premiums or assessments on Borrower's insurance policies.
- H) The Borrower shall provide proof of insurance to the Department annually and upon written request by the Department.

ARTICLE 15 – INSTALLATION OF OTHER FACILITIES

- A) The Borrower may at its own expense place or cause to be placed within the Project Area any structure, alteration, and/or improvement in addition to those set forth and described in Exhibit D, provided that such facilities:
 - 1) Are constructed, maintained and operated for the use, enjoyment, protection, and service of the public;
 - 2) Are in compliance with Article 13 of this Exhibit;
 - 3) Do not directly or indirectly reduce the service capabilities for the boating public called for in Exhibit D including the sanitary and parking facilities; and
 - 4) Have the prior written approval of the Department. Approval shall not be unreasonably withheld.
- B) The Department shall not be obligated to make or cause to be made any alteration, improvement, or repair to any facilities within the Project Area in addition to the original construction to the Project as provided for herein.

ARTICLE 16 – SIGN REFERRING TO DEPARTMENT FINANCING

The Borrower shall cause a permanent sign to be installed within the Project Area, which shall include the Department's logo (to be provided by Department) and a statement that the Department financed the Project. The sign may contain additional statements that recognize the participation of other government agencies in the Project. The sign shall be installed before the Project is made available to the public. The standard Department precast concrete sign shall be used unless the Borrower is required to use a different sign style or motif. The Department shall furnish an electronic drawing of the standard Department project credit sign to the Borrower for inclusion in the plans and specifications. The location of the project credit sign and make-up of a non-standard sign, including the dimensions, materials and lettering, requires the prior approval of the Department.

ARTICLE 17 – DIRECTIONAL SIGNS

The Borrower shall at the direction of the Department cause permanent directional signs to be installed that shall provide adequate directions for reaching the Project Area. The signs shall be installed on major roads in the area and in as close proximity as possible to freeway exits in conformance with the provisions of the Local Agency's Development Code and State Department of Transportation (CalTrans) policy. The locations and make-up of the signs, including the dimensions, materials, and lettering, require the prior approval of the Department.

ARTICLE 18 – WAIVER OF RIGHTS

Any waiver by either party hereto of its rights with respect to a Default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other Default or matter.

ARTICLE 19 – PROJECT REPRESENTATIVES

The Borrower and the Department shall each designate specific staff representatives for the purposes of communication between parties. Borrower's representative shall be by delegation of authority, signed by the person designated by Resolution to sign the contract or any amendments, and to make decisions concerning the contract.

ARTICLE 20 – REMEDIES NOT EXCLUSIVE

The use by either the Department or the Borrower of any remedy specified in this Agreement for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE 21 – OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either the Department or Borrower, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

ARTICLE 22 – SUCCESSORS AND ASSIGNS OBLIGATED

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

ARTICLE 23 – ASSIGNMENT

No assignment or transfer of this Agreement or any part hereof, rights or obligations hereunder, or interest herein by the Borrower shall be valid unless and until it is approved by the Department in writing. The Department's approval shall be granted at its sole discretion and may be made subject to such reasonable terms and conditions as the Department may impose.

ARTICLE 24 – LIABILITY

- A) The Borrower waives all claims and recourse against the Department, including the right to contribution for any losses or damages arising from, growing out of, or in any way connected with or incident to this Agreement.
- B) The Borrower, to the fullest extent permitted by law, shall indemnify, hold harmless the Department, officers, employees and agents (each an "Department Indemnified Party") from and against any and all Indemnifiable Losses arising out of, resulting from or in any way connected with:
 - 1) The Marina, including the Project, comprising any part of the Project to be financed or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or from the planning, design, acquisition, installation or construction, of the Project or any part thereof, including, without limitation, Indemnifiable Losses resulting from or in any way relating to any generation, processing, handling, transportation, storage, treatment or disposal of solid wastes, Hazardous Materials or any other Hazardous Material Activity relating to

- the Project including, but not limited to, any of those activities occurring, to occur or having previously occurred on the Project and any Releases on, under or from the Facilities to the extent occurring or existing prior to the execution and delivery of this Loan Agreement;
- 2) Any misrepresentation or breach of warranty by the Borrower of any representation or warranty in this Loan Agreement or any document delivered by the Borrower pursuant to, or in connection with, any of the foregoing; or
 - 3) Any breach by the Borrower of any covenant or undertaking set forth in this Loan Agreement, or any document delivered by the Borrower pursuant to, or in connection with, any of the foregoing; provided that such indemnification pursuant to this Section shall not apply to Indemnifiable Losses resulting because of the negligence or willful misconduct of any Indemnified Party or the gross negligence or willful misconduct of any Indemnified Party.
- C) The Department agrees to notify the Borrower promptly, but in no event later than twenty (20) business days, after written notice to the Department that any third party has brought any action, suit or proceeding against an Indemnified Party that may result in an Indemnifiable Loss (a "Third Party Action"). Upon such notice or other notice from an Indemnified Party of a Third Party Action, the Borrower shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party and reasonably acceptable to the Borrower (which may be the Attorney General of the State of California), and shall assume the payment of all Litigation Expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove (in its sole and absolute discretion) any such compromise or settlement and the Indemnified Party has no liability with respect to any compromise or settlement of any Third Party Claim effected without its written approval. Each Indemnified Party shall have the right to employ separate counsel in any Third Party Claim and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and disbursements of such separate counsel; provided, however, that a Trustee Indemnified Party may only employ separate counsel at the expense of the Borrower if in the reasonable judgment of such Trustee Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel. If the Indemnified Party fails to provide such notice to the Borrower, the Borrower is still obligated to indemnify the Indemnified Party for

Indemnifiable Losses, except that the Borrower is not liable for any Litigation Expense the Indemnified Party incurs during the period in which the Indemnified Party failed to give such notice.

- D) The rights and undertakings set forth in this Section do not terminate and survive the final payment and the termination or defeasance of this Loan Agreement.
- E) For purposes of this Section “Indemnifiable Losses” means the aggregate of Losses and Litigation Expenses.
- F) The Borrower’s obligations under this Article shall survive the payment of the Loan and termination of this Agreement.

ARTICLE 25 – TERMINATION

- A) Prior Termination. This Agreement shall terminate on the date specified in Article 7 (A) of this Exhibit if by such date (1) the Borrower has not met all conditions precedent to disbursement under this Agreement, or (2) the Department has disbursed no part of the Loan funds.
- B) Termination. In addition to the Department’s right to terminate pursuant to Exhibit C, and as otherwise provided in this Agreement, the Department may terminate this Agreement without cause upon a thirty (30) calendar days advance written notice to the Borrower.
- C) The Department may declare any loan proceeds already disbursed to the Borrower immediately due and payable.

ARTICLE 26 – WAIVER OF THE STATUTE OF LIMITATIONS

Borrower waives the benefit of any limitations affecting its liability hereunder or the enforcement thereof to the extent permitted by law.

ARTICLE 27 – SUPERSEDING GENERAL TERMS AND CONDITIONS (GTC)

- A) The reference to the Contractor in Exhibit C is the Borrower in this Agreement.
- B) Notwithstanding Paragraph 13 in Exhibit C, payment to Borrower for expenses shall be limited as provide for in Article 6 of this Exhibit.
- C) Paragraph 5 in Exhibit C is replaced by Article 24 of this Exhibit.

GTC 04/2017

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support

enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

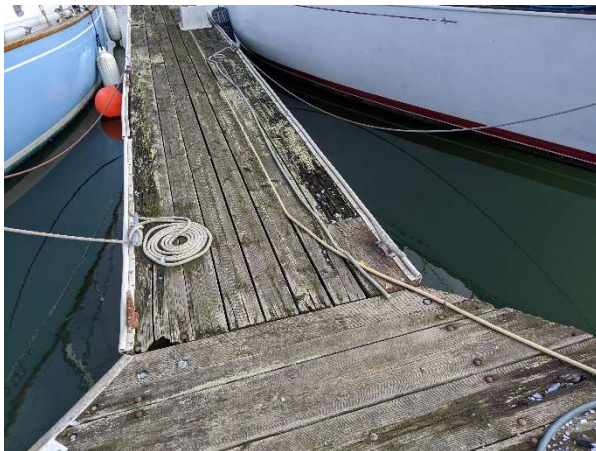
a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

BERKELEY MARINA LOAN FEASIBILITY REPORT



Dock D



Dock E

City of Berkeley

\$5,500,000 Loan

SUMMARY

The Department of Parks and Recreation, Division of Boating and Waterways (DBW) asks the Boating and Waterways Commission to provide advice and comment on the City of Berkeley's (City's) request for a \$5.5 million loan from the Harbors and Watercraft Revolving Fund (HWRF) for demolition and replacement of Docks D and E at Berkeley Marina.

The subject loan would fund design and construction of new docks, concrete piles, utilities, and necessary related infrastructure for these two docks.

There are no engineering, permitting, stakeholder or public access issues associated with this project. However, finances and scheduling may present challenges. DBW staff is working with the City to address these challenges, which are discussed below.

Due to DBW's obligation to safeguard public funds and the difficulties involved with recovering those funds in the event of a default by a public entity, staff recommends that if the Commission advises DBW to move forward with this loan, the City must meet certain conditions to DBW's satisfaction at several project milestones during the performance period. DBW will make design and permitting funding available immediately, in the amounts shown in the cost estimate at Table 1 below, but construction funds will not be authorized until DBW's conditions are met. These conditions will be written into the loan agreement. The recommended conditions are as follows:

- 1) No later than March 31, 2021, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund achieved a 1.25 debt service coverage ratio (DSCR) in the fiscal year ending June 30, 2020. This process must be repeated each subsequent March 31, confirming a 1.25 DSCR for the prior fiscal year, until construction has begun.

- 2) Before construction loan funding will be made available, and no later than March 31, 2022, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund's ratio of operating income to operating expenses in the fiscal year ending June 30, 2021 was at or above the projected ratio shown in Tables 3 and 3A of this report. This process must be repeated each subsequent March 31, confirming the income/expense ratio for the prior fiscal year met or exceeded the projections in this report, until construction has begun.
- 3) Before construction loan funding will be made available, and no later than December 31, 2021, the City must send DBW confirmation that all project permits have been obtained.
- 4) The Berkeley City Council shall adopt a resolution accepting the loan funds. The language of the resolution shall acknowledge the Marina Fund does not currently meet the income/expense ratio required by DBW and is not forecasted to do so, and the language of the resolution must further state that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from its General Fund, for every year until the loan is fully repaid. This condition may be withdrawn if and when the City demonstrates meeting the required income/expense ratio and debt service coverage ratio for five consecutive years.

DBW seeks Commission advice and comment on this proposed \$5,500,000 loan, with conditions, to the City of Berkeley for the improvements described in this February 14, 2020 Feasibility Report.

LOAN APPLICANT AND PREVIOUS COMMISSION ACTION

Loan Applicant

The loan applicant for this project is the City of Berkeley. The City's Parks Recreation and Waterfront Department (PRW) operates and maintains the marina facilities.

Commission Site Visit

On February 13, 2020, the Commission toured the site as part of this Boating and Waterways Commission meeting.

Previous Commission Action

The Commission has previously consented to the following loans to the City for improvements to Berkeley Marina:

- In FY 1964/65, a \$1,800,000 construction loan was approved to develop Berkeley Marina. Development consisted of the construction of 379 new berths, gangways, utilities, a breakwater, dikes, access roads, parking, buildings, and landscaping. In addition, 209 existing berths were relocated.
- In FY 1969/70, a \$25,000 planning loan was approved to study the feasibility of replacing or improving the existing 209 berths.
- In FY 1971/72 and FY1972/73, a \$1,500,000 construction loan was approved in two phases to demolish the 209 old berths in the south basin, and replace them with 560 new concrete berths, two new restrooms, and additional parking. These docks are now known as Docks K-O.
- In FY 1985/86, a \$2,000,000 construction loan was approved to refurbish docks A-G,

including the electrical system, decking, flotation piling encasement, water lines, dock storage boxes, and gangway security gates. Also, the access road along the east perimeter of the marina basin was to be realigned, graded and paved, and the parking areas adjacent to Docks A-E and Docks H-I were to be repaired and repaved. This project experienced prolonged delays at the local level for several years, and ultimately the project was re-scoped to use loan funds for the demolition and replacement of Docks F-G and the realignment of the east access road. Simultaneously, the City used its own funds to rebuild the parking area adjacent to Docks A-E.

- In FY 2001/02, a \$1,800,000 construction loan was approved to demolish and replace Docks A-E along the north side of the marina basin, add new utilities to these docks, install new docks and gangways for barrier-free access, and replace four existing restroom buildings. In FY 2002/03, an additional \$2,000,000 construction loan was approved for this same project. In FY 2003/04, another \$3,200,000 construction was approved, and in FY 2006/07 another \$2,000,000 loan was approved. Later, this project was re-scoped to prioritize refurbishment of Docks H-I, and to reduce the number of restroom buildings from two to four. With funds left over after that work was completed, the City demolished and replaced docks A-C, now known as Docks B and C. No work was done on Docks D and E using these loan funds, as the remaining funds were insufficient to complete that work. In total, \$7,900,000 of the \$9,000,000 in authorized loan funding was used. This \$7,900,000 loan is currently in repayment.

GENERAL LOCATION AND AREA

Location

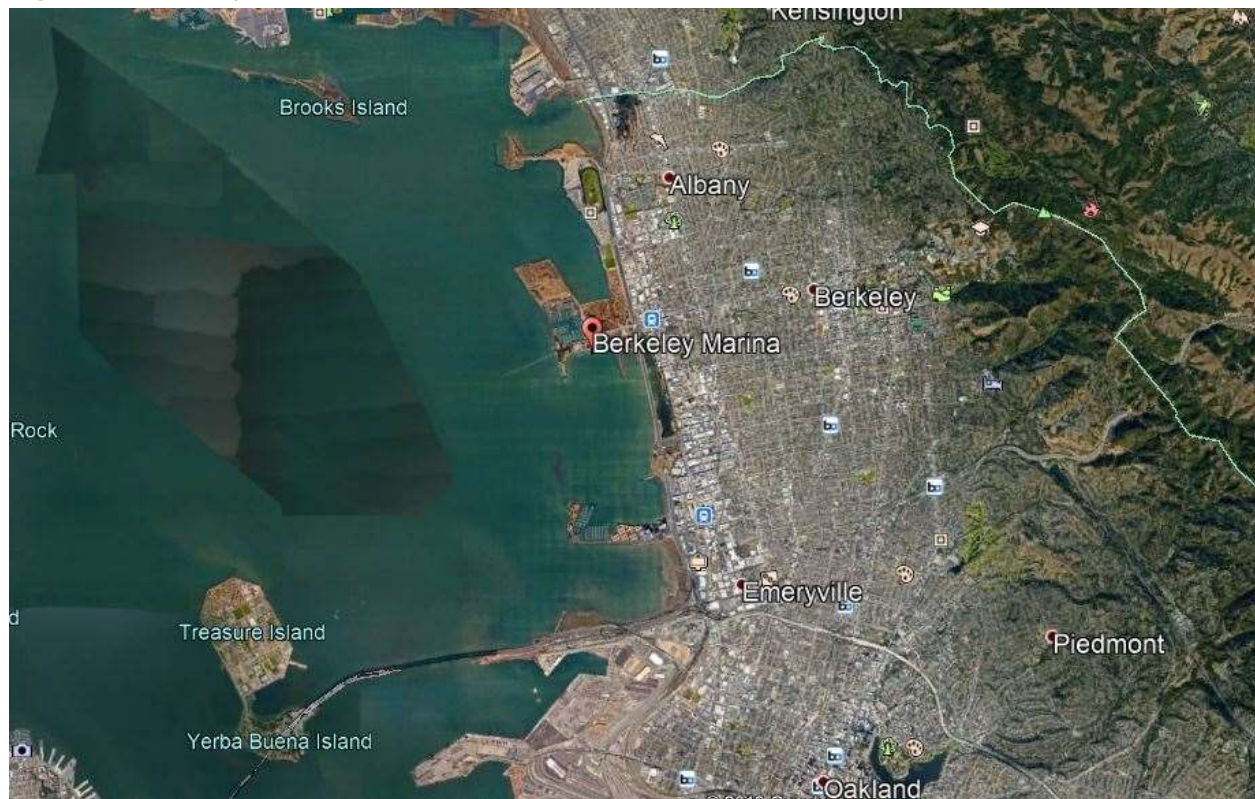
As shown in Figure 1 below, Berkeley Marina is located on the eastern shore of San Francisco Bay, about 2.5 miles north of the Oakland-Bay Bridge, and eight nautical miles from the Golden Gate Bridge.

Nearby marinas include Safe Harbor Marina in Emeryville, a private marina 3 miles south of Berkeley Marina, and the following public marinas: Marina Bay Yacht Harbor, 7 miles north in Richmond; and Alameda Marina, 10 miles south; and South Beach Harbor, 11 miles southwest across the Bay Bridge. San Leandro Marina, 17 miles south, closed in November 2019.

To reach the Marina from Sacramento, use Interstate 80 West. Exit at University Avenue (Exit 11), then keep right at the fork, following the signs for Berkeley Marina. At the stop sign, turn left onto University Avenue. Stay in the right lane, and in a half mile, turn right onto Marina Boulevard. In one mile Marina Boulevard will turn left and become Spinnaker Way. In a quarter mile, turn left into the parking lot for Docks D and E.

To travel to the Marina using GPS navigation, enter the following destination address: 7 Spinnaker Way, Berkeley, CA 94720.

Figure 1: Berkeley Marina Location

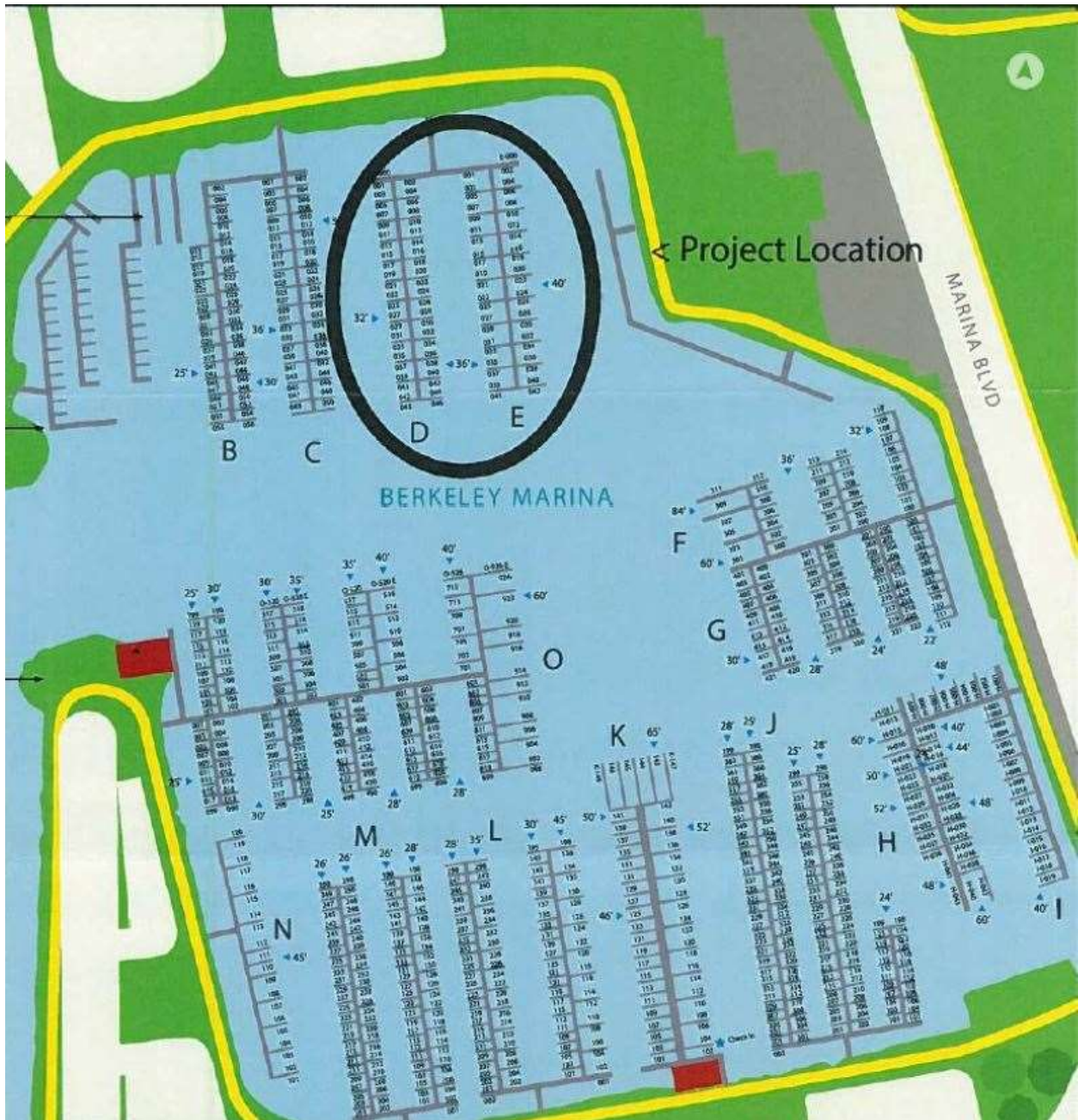


Source: Google Earth

Existing Conditions

As shown in Figure 2, there are 14 large docks in the Marina, named Dock B through Dock O, with 1,032 berths ranging in length from 20 feet to 85 feet. The original docks were constructed in the 1960s, as discussed above, and all but two have since been rehabilitated or replaced. The exceptions are Docks D and E, which are located in the northern area of the Marina.

Figure 2: Berkeley Marina Map



Source: City of Berkeley

Docks D and E are nearly 50 years old and well past their original expected useful life of 15 years. 20 percent of their slips have degraded to the point of being unrentable. The docks present tripping hazards due to broken and rotted deck planking, many areas on the docks have torqued due to water intrusion into the dock floats, most of the timber piles are rotted at the water line with some having collapsed, and the electrical service is largely original construction that has failed a number of times. Age-related deterioration was exacerbated by a 2009 storm event that caused significant damage to these docks' end slips. In addition to their structural problems, the design of both docks does not meet current ADA accessibility standards.

Recent Challenges and Actions Taken

The Marina as a whole has experienced a gradual decline of berthers in recent years. In January 2018, 812 of the 1,032 total slips throughout the Marina were occupied, for an occupancy rate of 79%. As of January 2020, overall occupancy had declined to 791 slips occupied, for an occupancy rate of 77%. Docks D and E contain nearly 10 percent of the total slips in the Marina, and the City's inability to rent these docks' damaged slips has negatively impacted the Marina's occupancy rate.

The City has recently faced numerous additional challenges at the Marina that it believes have contributed to the loss of berthers. In recent years, encampments of people experiencing homelessness have formed at the Marina, requiring the PRW to act with both compassion and diligence to relocate them. Separately, crime around the Marina has increased, sometimes victimizing berthers. And several commercial lessors have departed the Marina, including a well-known restaurant that had been there for nearly 50 years. The physical condition of many Waterfront facilities and infrastructure is also an issue: The Marina's entry and exit roads are in major disrepair, many other facilities are at or near the end of their useful lives, and the PRW currently projects over \$100 million in deferred maintenance and capital improvement needs at the Waterfront. The Berkeley Pier, adjacent to the Marina, closed in 2015 due to need for major structural repairs, and to date those repairs have not been scheduled.

The City has succeeded in addressing or beginning to address many of these issues. The City has disbanded Marina encampments on two separate occasions, and will soon count the City police department among its lessors; their office's new presence at the Waterfront is expected to serve as a crime deterrent. The City has also hired safety staff to patrol the Marina at all hours. Respecting maintenance, the City has committed General Fund resources to pay for repairs to some of the Marina's finger docks and for improvements to Marina restrooms. Bond funding is being used to improve several key roads into and around the Marina. And the City is paying for a contractor to develop a business plan to promote the Marina's long-term ability to remain self-sufficient. Replacement of Docks D and E will assist in executing that plan.

PROJECT DESCRIPTION

The proposed project will remove Docks D and E and related infrastructure, and will install new components as listed below.

Scope

Concrete Docks

The existing dilapidated wooden docks will be removed and replaced with new, ADA-compliant concrete docks.

Concrete Piles

The existing rotted timber piles will be removed, and replaced with concrete piles.

Utilities

All new utilities will be installed, including electrical, communications (telephone and cable), potable water, and fire suppression systems.

Gangway

A new ADA-compliant 8 foot by 80 foot gangway will be installed to connect the parking lot to the security gate for Docks D and E.

Gate Structure

A new security gate will be installed at the entrance to Docks D and E, near the foot of the gangway.

Concrete Wall

A concrete wall will be installed below the gangway.

Slope Protection

Riprap slope protection will be installed in front of the new concrete wall.

Landside Improvements

ADA parking near Docks D and E will be repaved and repositioned, striping and signage will be updated, the concrete walkway in front of the docks will be replaced, and bollards will be installed.

Cost Estimate

The proposed \$5,500,000 loan will be used to demolish and replace Docks D and E, and to conduct necessary related design and construction work. Most of this project will be funded through this proposed DBW loan. Table 1 below shows the most recent project cost estimate.

Table 1: Berkeley Marina Project Cost Estimate		
CONSTRUCTION SCOPE	COST ESTIMATE	
	DBW	City of Berkeley
Mobilization / Demobilization	\$ 225,000	
Stormwater Pollution Prevention Plan (SWPPP)	50,000	
Landside Demolition & Disposal	15,000	
Waterside Disposal & Removal	245,000	
Concrete Walkway (4" Concrete, 6" AB)		27,500
Asphalt Pavement (3" AC, 9" AB)		125,000
Concrete Curb	3,750	
Striping and Traffic Signage	7,500	
Bollard (6" Diameter)	10,000	
Gate Structure	39,250	
Concrete Wall	159,000	
Gangway (8 x 80')	120,000	
Gangway Abutment	35,000	
Gangway Toe Plate at Float	15,000	
Rock Slope Protection (Riprap) at Abutment	60,000	
Concrete Pile (18" Octagonal, 60' Long)	605,000	
Float Dock System	1,814,500	
Dock Boxes	59,250	
Potable Water Service & Fire Service	240,950	
Utilities to Slips	405,000	
Construction Subtotal	\$ 4,109,200	\$ 152,500
NON-CONSTRUCTION COSTS*		
Escalation (9%)**	\$ 369,828	13,725
Construction Contingency (10%)	410,920	15,250
Permit Fees (3%)	127,851	
Engineering before and during project (10%)	426,170	
Construction Management & Inspection (5%)		213,085
Non-Construction Subtotal	\$ 1,334,769	\$ 242,060
TOTAL ESTIMATED COST BY PARTNER	\$ 5,443,969	\$ 394,560
TOTAL OVERALL PROJECT COST	\$5,881,146	
Source: City cost estimate dated 1/17/2020, and DBW/ analysis		
* Percentages are of the Construction Subtotal		
** Escalation at 3% per year for 3 years		

Project Status

No formal project work has begun.

Timeline

The City expects to complete construction by the end of January 2023, assuming the loan agreement is executed by August 2020. Completion by this date is necessary for State funds to be used within their statutory period of availability. However, the schedule the City supplied to DBW is aggressive, particularly regarding the permitting timeline. If construction is not completed within the loan performance period, a funding extension would require Department of Finance approval, and approval cannot be guaranteed.

Engineering Feasibility

There are no known difficult or unusual engineering problems associated with the proposed project. Similar work was done on the B and C docks ten years ago, and no unusual engineering problems emerged.

Access

Berkeley Marina is open to all on an equal and reasonable basis.

Environmental Impact and Permits

The City expects the California Environmental Quality Act compliance process to result in a Mitigated Negative Declaration, but this process has not yet begun.

The following permitting processes and consultations will need to be completed for the project:

- U.S. Army Corps of Engineers (USACE) Nationwide Permit #3: Not yet begun.
- California Department of Fish and Game Section 1600 Permit: Not yet begun.
- California Regional Water Quality Control Board Certification: Not yet begun.
- National Marine Fisheries Service (consult via USACE): Not yet begun.
- San Francisco Bay Conservation and Development Commission Permit Extension No. 5-79 (as amended through 5/2009): Not yet begun.
- California State Lands Commission Notification: Not yet begun.

DBW does not anticipate any unusual permitting challenges for this project, although delays in the permitting process would put their completion schedule at serious risk.

ECONOMIC ANALYSIS

Three factors used to determine the economic feasibility of lending public funds include the following: One, the borrower demonstrates that adequate capital is available to finance the project to completion. Two, the borrower demonstrates that revenues will be sufficient to operate and maintain the project area, including the repayment of any debt. Three, the borrower proposes adequate collateral for the loan.

Public records respecting marina finances are somewhat complex. Each year the City's Comprehensive Annual Financial Report (CAFR) includes a report specific to the City's "Marina Operations Fund," which is different from but related to the Marina Fund discussed throughout our analysis on the following pages.

The most recent CAFR available, for fiscal year 2017/18, reflected an \$833,000 net loss for this fund. However, according to City staff, this audited account does not accurately reflect actual Marina Fund operating revenues and expenditures. There are two key differences between the CAFR figures and the budget-based figures for the Marina: the CAFR uses accrual-based accounting while the budget office uses a cash-based system. And the operating revenues

reflected in the CAFR include the Marina Fund plus two Marina-oriented grant funds; when the grant funds are received or spent, they show up in the CAFR account but not the Marina Fund account.

In January 2020, the City provided DBW an updated Marina Fund revenue and expenditure forecast in support of their application for this loan. Revenue and expenditure forecasts in the following sections are based on this updated forecast. However, this forecast has not yet been presented at a City Council meeting. The condition of the Marina Fund has been a matter of significant public interest in the last two years, and DBW looks forward to receiving a report from the City on how this updated Marina Fund forecast is received by the Council and public.

Assumptions

The City's January 2020 financial report adopts the following assumptions for long-term revenue and expense growth, after the benefits of construction have been realized:

- Waterfront lease revenues to grow at a 1% annual rate for the duration of the loan repayment period.
- Slip rental revenues and other Marina revenues to grow 2.5% annually.
- Personnel expenses (both salary and fringe) to grow 2% annually.
- No capital improvement expenses to come out of the Marina Fund for the duration of the loan repayment period.

Each of these revenue and expense types are discussed in more detail below.

DBW conducted its financial analysis based on the City's assumptions. However, based on our experience, all of these revenue and expense growth rates are lower than DBW would typically expect. Personnel expenses are subject to collective bargaining, and the City cannot guarantee they will grow at only a 2% rate indefinitely. And because waterfront lease revenue will be relatively inflexible, since many lease rates are likely to be defined by long-term contracts, personnel cost increases above the forecasted rate would likely require more-than-corresponding slip fee increases for the Fund to remain in balance.

The City also assumes no capital improvement expenses will come from the Marina Fund for the duration of the loan repayment period. Their belief is other City revenues, notably General Fund support and bond revenue, will cover capital expenses from FY2021/22 through FY2024/25. After that, the City expects new sources of revenue such as new ferry service to cover capital improvement needs. Because the City's Marina Fund forecast only covers five future years, the amounts of future capital improvement needs and revenue from new sources are not shown. However, capital improvement costs are shown as Marina Fund operating expenses for past years, but are removed from the scope of Marina Fund expenses for the forecast period. The forecast provided, and which DBW relies on, suggests that capital improvements cease to be an operating cost to the Marina Fund after FY2019/20, at least temporarily.

The City has informed DBW that its budget process forbids making commitments beyond the current budget year, and therefore it cannot assure DBW that General Fund revenue will continue to cover capital improvements in future years.

Revenue

A project's financial feasibility partly depends on whether there will be sufficient revenue to pay for project expenses on an annual basis, including the repayment of the proposed DBW loan.

In this case, City revenues to repay the DBW loans will be generated from several sources: berthing fees (which comprise about 50% of Marina Fund revenue); waterfront leases (35%); and various other sources (15%). Revenue and expenditure projections are discussed in more detail below.

DBW estimates that in FY 2023/24 Marina revenues will be \$7.2 million annually. The City believes that by FY 2025/26 additional revenues from new sources such as new ferry service will become available that will offset future capital improvement expenditures, which are discussed further below. However, the City has not forecasted an amount of capital per year that will be necessary to meet this need. In its May 2019 budget forecast, the City was forecasting \$500,000 in capital improvement expenses annually.

Berthing Fees

As shown in Table 2, Berkeley Marina's current slip fees are competitive with surrounding marinas.

	30'	40'	50'	60'	as of
Berkeley	\$ 310	\$ 438	\$ 581	\$ 740	12/26/2019
Alameda	\$ 255	\$ 400	\$ 600	\$ 780	1/6/2020
Richmond	\$ 269	\$ 436	\$ 511	\$ 741	1/6/2020
South Beach Harbor	\$ 385	\$ 668	\$ 902	\$ 1,167	1/1/2019

Sources: City of Berkeley staff, DBW research and analysis

Berkeley Marina's slip rental rates are based on the length in feet of the slip. Currently, Docks D and E combined include capacity for 88 slips of various sizes from 32 feet to 40 feet, with additional end ties that can accommodate various lengths. Many of these slips are un-rentable due to disrepair, and only 42 slips are currently occupied on Docks D and E. Upon completion of the project, there will be 79 slips on these docks, of sizes from 40 feet to 46 feet. Total linear footage of these docks' slips will increase only modestly, from 3,244 to 3,274. However, the new slips are much more likely to be rented.

The Marina's slip rental fees can be increased or lowered based on berth- and berther-specific factors such as whether a berth is upwind, whether a berth is single or double occupancy, and whether a berther rents multiple slips at the Marina.

As discussed above, the occupancy rate for the entire Marina is currently 79%. The occupancy rate for Docks D and E is 48%. Occupancy of these two docks is expected to immediately increase by 20 to 35 berthers when construction is complete.

Waterfront Leases

Lease revenue is provided by Waterfront tenants including the Doubletree Hotel, Skates on the Bay and Hana Japan restaurants, the Berkeley Marine Center, the Bait Shop, and office tenants at 125-127 University, the Berkeley Yacht Club and other non-profit tenants. Waterfront lease revenue comprises about one third of all Marina Fund revenue.

Other Revenue Sources

Other Marina revenue sources include live-aboard fees, dry storage, charter boat fees, fines and penalties, launch ramp fees, and other minor but regular sources. The Marina also collects revenue from several ongoing recreational programs, including special event parking and

playground service and nature center fees.

The Waterfront District also occasionally receives grants, such as it did in fiscal year 2017/18. However, there is no guarantee such third-party revenue augmentations will be available in future years. Accordingly, DBW's analysis in Table 3 does not include a forecast for future grants received.

Expenses

Operational: The City estimates that in FY 2023/24 Marina operational expenses will be \$7.2 million annually. Capital improvements through FY 2024/25 are expected to be covered by bond revenue. As noted above, the City believes capital improvement expenses after that time will be offset by new revenues from new activities, such as expanded ferry service.

Debt Service: DBW estimates that the annual debt service for the proposed \$5.5 million loan will be approximately \$342,000. The interest rate will be 4.5%, compounded continuously. The final payment on the prior loan is expected to be due on August 1, 2041. Total debt service each year, including both loans, will be \$828,000.

Together, operational expenses and debt service are projected to be \$7 million in FY2023/24, or \$200,000 less than revenues. A breakdown of projected revenues and expenses is shown in Table 3.

Dredging Reserves

The City reports that it has not had to dredge the Marina in many years, and that slips have remained accessible without routine dredging. DBW will not require a dredge reserve unless a need for one emerges during the engineering process.

Maintenance Reserve

DBW normally requires lenders to hold a maintenance reserve totaling 2% of revenue. Such a reserve is already being maintained based on the terms of the prior loan. Staff intends to include a clause in the new loan agreement requiring the City to continue holding 2% of revenue for maintenance purpose through the end of the new loan.

Payment Reserve

The City does not maintain an operating reserve as a percentage of its annual Marina Fund operating budget.

Collateral

Collateral for the proposed loan is in the form of a Security Agreement and a recorded Collateral Assignment of Rents and Leases on Marina revenue. The offered collateral, in combination with Condition #4 of the loan, is sufficient for DBW's requirements.

FINANCIAL MEASURES

Income Expense Ratio

Since 2009, it has been DBW's practice to require a 1.2:1 income to expense ratio. Income/expense ratio is operating revenue divided by operating expenses. According to Table 3, this project has an income/expense ratio of 1.17 in FY 2023/24. This ratio then stays steady over time, based on the City's assertion that total operating revenues and expenses will grow at approximately the same rate. The income/expense ratio is close to the minimum requirement.

Debt Service Coverage Ratio

The debt service coverage ratio (DSCR) is a measure of an entity's capacity to not only maintain operations, but also to afford debt. DSCR is net operating income divided by total debt service. The minimum DSCR established by the Commission at its May 2009 meeting was 1.25 for public marina loans.

According to Table 3, this project has a DSCR of 1.21 in FY 2022/23, the potential first year of loan repayment. This ratio improves in future years, reaching 1.27 in FY 2024/25 and remaining above 1.25 in subsequent years. The DSCR meets the minimum requirement.

CONCLUSION

The Division's analysis indicates that this project is feasible from an engineering, permitting, stakeholder, and public access perspective. However, additional financial and scheduling assurances will be required for this project to be viable, and the project may not be completed within the funds' period of availability.

Due to DBW's obligation to safeguard public funds and the difficulties involved with recovering those funds in the event of a default by a public entity, staff recommends that if the Commission advises DBW to move forward with this loan, the City must meet certain conditions to DBW's satisfaction at several project milestones during the performance period. DBW will make design and permitting funding available immediately, in the amounts shown in the cost estimate at Table 1 below, but construction funds will not be authorized until DBW's conditions are met. These conditions will be written into the loan agreement. The recommended conditions are as follows:

- 1) No later than March 31, 2021, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund achieved a 1.25 debt service coverage ratio (DSCR) in the fiscal year ending June 30, 2020. This process must be repeated each subsequent March 31, confirming a 1.25 DSCR for the prior fiscal year, until construction has begun.
- 2) Before construction loan funding will be made available, and no later than March 31, 2022, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund's ratio of operating income to operating expenses in the fiscal year ending June 30, 2021 was at or above the projected ratio shown in Tables 3 and 3A of this report. This process must be repeated each subsequent March 31, confirming the income/expense ratio for the prior fiscal year met or exceeded the projections in this report, until construction has begun.
- 3) Before construction loan funding will be made available, and no later than December 31, 2021, the City must send DBW confirmation that all project permits have been obtained.
- 4) The Berkeley City Council shall adopt a resolution accepting the loan funds. The language of the resolution shall acknowledge the Marina Fund does not currently meet the income/expense ratio required by DBW and is not forecasted to do so, and the language of the resolution must further state that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from its General Fund, for every year until the loan is fully repaid. This condition may be withdrawn if and when the City demonstrates meeting the required income/expense ratio and debt service coverage ratio for five consecutive years.

COMMISSION ADVICE AND COMMENT

DBW seeks Commission advice and comment on the proposed \$5,500,000 HWRF loan, with conditions, to the City of Berkeley for the improvements described in this February 14, 2020 Feasibility Report.

Table 3: Financials Forecasts, 2019-2040

	2019 actuals from City												2020-2025 City forecasts												2026-2040 DEW projections based on City forecasts											
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040														
WATERFRONT OPERATING REVENUE																																				
Berth rentals (1)	3,426	3,461	3,547	3,636	3,727	3,820	3,915	4,013	4,113	4,216	4,321	4,429	4,540	4,654	4,770	4,889	5,012	5,137	5,265	5,397	5,532	5,670														
Live Aboard Fees	262	281	288	274	281	288	296	303	311	319	327	335	343	352	361	370	379	388	398	408	418	429														
Dig Storage	104	100	103	105	108	110	113	116	119	122	125	128	131	134	138	141	145	148	152	156	160	164														
Launch Ramp	103	109	111	114	117	120	123	126	129	132	135	139	142	146	149	153	157	161	165	169	173	177														
Charter Boat Fees	112	125	128	131	135	138	141	145	149	152	156	160	164	168	172	177	181	186	190	195	200	205														
Locker Rentals	18	18	19	19	20	20	21	21	22	23	23	24	24	25	26	26	27	28	28	29	30	30														
Sewer Service / Marina	4	3	3	3	3	4	4	4	4	4	4	5	5	5	5	5	5	5	5	6	6	6														
Fines & Penalties	71	75	79	81	83	85	87	89	92	94	96	99	101	104	106	109	112	114	117	120	123	126														
Miscellaneous	50	53	60	62	64	65	67	69	72	74	76	77	79	81	83	85	88	90	92	94	97	97														
EY Charging Stations	4	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5														
Valerini Leases (2)	2,479	2,485	2,272	2,296	2,318	2,342	2,365	2,389	2,414	2,438	2,462	2,487	2,512	2,537	2,562	2,588	2,614	2,640	2,668	2,693	2,720	2,747														
Special Licenses	82	84	86	88	89	91	92	95	98	100	103	105	108	111	113	116	119	122	125	128	131	135														
Phone Bank Fees	30	31	32	33	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	50	51														
Marina Center Fees	14	14	15	15	15	15	16	16	17	17	17	18	18	19	19	20	20	21	21	22	22	23														
Marina Buoys / Trees	20	7	7	7	7	8	8	8	8	9	9	9	9	10	10	10	10	10	11	11	11	12														
Donations	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2														
Subtotal Operating Revenue	6,779	6,515	6,734	6,863	7,007	7,149	7,293	7,440	7,590	7,744	7,901	8,061	8,225	8,393	8,565	8,741	8,921	9,104	9,292	9,485	9,681	9,883														
ADDITIONAL INCOME																																				
Interest	74	35	18	18	21	22	23	25	26	27	27	28	28	29	29	30	30	31	32	32	33	34														
Other Fees	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0														
Subtotal Additional Revenue	74	35	18	21	22	23	25	26	26	27	27	28	28	29	29	30	30	31	32	32	33	34														
TOTAL REVENUES	6,853	6,550	6,752	6,880	7,029	7,172	7,318	7,465	7,616	7,770	7,928	8,089	8,254	8,422	8,594	8,771	8,951	9,135	9,324	9,517	9,714	9,916														
EXPENSES																																				
Personnel (3)	3,880	3,711	3,841	3,739	3,767	3,843	3,920	3,998	4,078	4,160	4,243	4,328	4,414	4,503	4,593	4,685	4,778	4,874	4,971	5,071	5,172	5,276														
Non Personnel (3)	1,956	2,093	2,095	2,076	2,118	2,160	2,203	2,247	2,292	2,338	2,385	2,433	2,481	2,531	2,581	2,633	2,686	2,739	2,794	2,850	2,907	2,965														
Cap Improvements	371	1,739	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0														
DEW maint reserve (2% of annual revenue) (4)	137	131	135	138	141	143	147	151	154	158	162	166	170	175	179	184	188	193	198	203	208	213														
Subtotal Operating Expenses:	6,044	7,674	6,011	5,953	6,026	6,146	6,270	6,395	6,525	6,656	6,790	6,927	7,066	7,208	7,353	7,501	7,652	7,806	7,963	8,123	8,287	8,454														
NET OPERATING INCOME	809	(1,124)	741	937	1,003	1,025	1,048	1,069	1,091	1,114	1,138	1,162	1,188	1,214	1,241	1,270	1,299	1,329	1,361	1,394	1,427	1,463														
Less: DEW Debt Service (\$5,500,000 loan, 4.5% interest rate, 30 year repayment term)	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488														
Less: Additional debt service, prior DEW loan (5)	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488	488														
NET INCOME	323	(1,610)	255	451	517	537	560	572	593	615	637	660	684	708	733	759	786	814	842	871	901	935														
DEW INCOME/EXPENSE RATIO (min. 1.2:1 req'd)	1.13	0.85	1.12	1.16	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17														
DEBT SERVICE COVERAGE RATIO (min. 1.25 req'd)	1.66	-2.31	1.52	1.93	1.21	1.24	1.27	1.29	1.32	1.35	1.37	1.40	1.43	1.47	1.50	1.53	1.57	1.61	1.64	1.68	1.72	1.77														

Notes:
 1. Berth fees are estimated to increase by 1% in FY20, and 2.5% thereafter following annual fee increases.
 2. Lease revenue is projected to increase by 1% per year, consistent with historical averages.
 3. Personnel and non-personnel expenses are projected to increase 2% per year.
 4. Personnel for maintenance are projected to increase 2% per year.
 5. Prior DEW loan of \$7,853,471 at 4.5% interest rate. Repayment expected to be complete in approximately August 2041.

Table 3A: Financial Forecasts, City Forecast, 2019-2025

TABLE 3A: BERKELEY MARINA CASH FLOW PROJECTIONS AND DEBT SERVICE COVERAGE RATIO FY 2019 THROUGH FY 2025 (Figures in Thousands)							
	2019 actuals from City		2020-2025: City forecasts				
	2019	2020	2021	2022	2023	2024	2025
WATERFRONT OPERATING REVENUE							
Berth rentals (1)	3,426	3,461	3,547	3,636	3,727	3,820	3,915
Live Aboard Fees	262	261	268	274	281	288	296
Dry Storage	104	100	103	105	108	110	113
Launch Ramp	103	109	111	114	117	120	123
Charter Boat Fees	112	125	128	131	135	138	141
Locker Rentals	18	18	19	19	20	20	21
Sewer Service / Marina	4	3	3	3	3	4	4
Fines & Penalties	71	75	79	81	83	85	87
Miscellaneous	50	59	60	62	64	65	67
EV Charging Stations	4	4	5	5	6	6	7
Waterfront Leases (2)	2,479	2,165	2,273	2,296	2,319	2,342	2,366
Special Event Parking	82	82	84	86	89	91	93
Playground Service Fees	30	31	32	33	33	34	35
Nature Center Fees	14	14	14	15	15	15	16
Marina Benches / Trees	20	7	7	7	7	8	8
Donations	0	1	1	1	1	1	1
Subtotal Operating Revenue	6,779	6,515	6,734	6,869	7,007	7,149	7,293
ADDITIONAL INCOME							
Interest	74	35	18	21	22	23	25
Other Fees	0	0	0	0	0	0	0
Subtotal: Additional Revenue	74	35	18	21	22	23	25
TOTAL REVENUES	6,853	6,550	6,752	6,890	7,029	7,172	7,318
EXPENSES							
Personnel (3)	3,580	3,711	3,841	3,739	3,767	3,843	3,920
Non Personnel (3)	1,956	2,093	2,035	2,076	2,118	2,160	2,203
Cap Improvements	371	1,739	0	0	0	0	0
DBW maint reserve (2% of annual revenue) (4)	137	131	135	138	141	143	147
Subtotal Operating Expenses:	6,044	7,674	6,011	5,953	6,026	6,146	6,270
NET OPERATING INCOME	809	(1,124)	741	937	1,003	1,025	1,048
Less: DBW Debt Service (\$5,500,000 loan, 4.5% interest rate, 30 year repayment term)					342	342	342
Less: Additional debt service, prior DBW loan (5)	486	486	486	486	486	486	486
Total Debt Service	486	486	486	486	828	828	828
NET INCOME	323	(1,610)	255	451	175	197	220
DBW INCOME/EXPENSE RATIO (min. 1.2:1 req'd)	1.13	0.85	1.12	1.16	1.17	1.17	1.17
DEBT SERVICE COVERAGE RATIO (min. 1.25 req'd)	1.66	-2.31	1.52	1.93	1.21	1.24	1.27
Notes:							
1	Berth fees are estimated to increase by 1% in FY20, and 2.5% thereafter following annual fee increases.						
2	Lease revenue is projected to increase by 1% per year, consistent with historical averages.						
3	Personnel and non-personnel expenses are projected to increase 2% per year.						
4	Reserve for maintenance set at 2% of revenue per ordinary DBW requirements.						
5	Prior DBW loan of \$7,863,471 at 4.5% interest rate. Repayment expected to be complete in approximately August 2041.						

Staff note: Table 3A is identical to Table 3 for the years it covers. DBW is providing this version of the table for ease of readability.

Small Craft Harbor and Recreational Marina Loan Programs



Marina Operations,
Maintenance, and Capital
Outlay Loan Requirements

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I. Intent of Loan Requirements

The California Department of Boating and Waterways (DBW) maintains a large loan portfolio of approximately 200 public and private marina loans. In 2001, the portfolio had a combined total value of approximately \$220 million. Funding for the loan programs comes from the Harbors and Watercraft Revolving Fund.

The public loan program, known as the Small Craft Harbor Loan Program, was authorized in 1957 to make loans to cities, counties, and other government agencies for development, or operation, of small craft harbors and facilities. Most of DBW's portfolio (approximately \$200 million for 40 loans) is for public marina facilities.

The private loan program, initiated in its current form in 1985, provides loans directly to private recreational marina owners for development, expansion, and improvement of boating facilities. In 2001 there were about 30 outstanding private loans, totaling \$22 million. The private loan program is known as the Recreational Marina Loan Program. Both loan programs are managed by the Boating Facilities Program within DBW.

DBW has four key objectives for the marina operations, maintenance, and capital outlay loan requirements that shall apply to all new DBW public and private marina loans:

- To protect its sizable investment in statewide boating infrastructure, DBW must ensure that its borrower's marinas are operated in an efficient and economical manner (Operations Report), are annually repaired and maintained (Maintenance Budget Requirement), and that these marinas have adequate reserves for necessary periodic capital outlay expenditures (Capital Outlay Reserve Account)
- The Operations Report and Maintenance Budget Requirements, in combination with the Capital Outlay Reserve Account Requirement, are tools for DBW, as a major financial marina lender, to essentially promote "good management" on its marina borrowers. The Operations Report, Maintenance Budget, and Capital Outlay Reserve Account Requirements are supported by authority in the State Harbors and Navigation Code, Chapter 2, Article 3, Section 71.4 (for public loans) and Chapter 2, Article 5, Section 76 (for private loans)
- The Operations Report, Maintenance Budget, and Capital Outlay Reserve Account Requirements are consistent with industry best practices of ensuring that marinas operate efficiently and economically (Operations Report Requirement), perform necessary short-term maintenance (Maintenance Budget Requirement) and make necessary long-term improvements (Capital Outlay Reserve Account Requirement) to retain the functionality and investment value, of marina facilities during the life of DBW loans. The Operations Report insures that the marina is operated efficiently and economically. The Maintenance Budget Requirement insures that enough financial resources and staff are devoted to ongoing marina maintenance, in addition to just marina operations. The Capital Outlay Reserve Account will help reduce the negative effects of unpredictable increases in the annual operating and maintenance budgets of marinas by buffering and providing for the relative large and lumpy capital outlays that occur over time. The

capital outlay requirement insures continuing reinvestment by the marina borrower in depreciable marina capital items through requiring formal long-term capital budgeting as part of DBW financial loan covenants

- The Operations Report, Maintenance Budget, and Capital Outlay Reserve Account Requirements are to help assure adequate operation, maintenance, and condition of the marina, and also to ensure DBW that if the marina has to be repossessed in the event of foreclosure, the State's investment value is maintained, and there are funds to help cover deferred maintenance on the marina.

To meet these objectives DBW has developed three requirements: (1) Operations Report, (2) Maintenance Budget, and (3) Capital Outlay Reserve Account. This document describes each requirement and the obligations of the marina borrower and DBW for compliance. DBW recognizes that each marina operates under a unique set of circumstances dictated by a wide range of specific factors, such as: location, age, dock materials, market area, ownership, and customer base. These DBW requirements are intended to provide minimum guidelines or standards, recognizing that a "one-size-fits-all" requirement may not necessarily work for every marina. Thus,

DBW encourages each marina to customize and tailor these minimum requirements to their facility and situation. The reporting and accounting requirements are intended to be the minimum necessary to insure compliance with DBW guidelines – guidelines all marinas should already be following of their own accord. It is not DBW's intent to burden marinas with excessive operating requirements, however some reporting is necessary to insure accountability and to protect the State's significant investment in boating facilities statewide. These guidelines are intended to be compatible with each marina's long-term goals. Three such compatible long-term goals that apply to most marinas, whether publicly or privately owned, are as follows:

- Maintain the marina to a standard that is competitive with other marinas in the area and attracts boaters to the marina
- Meet current and long-range needs of the community, and of boaters, in the region
- Produce revenues sufficient to maintain and improve the marina infrastructure and make full debt service payments on the DBW loan.

Each marina that applies these DBW standards and guidelines may also have additional, more specific, goals for their facility.

II. Definitions and Examples for Loan Requirements

1. Marina Operation Costs

- Marina operation costs provide a benefit in the year that they occur
- Marina operation costs are marina income statement items
- Marina operation costs do not include any marina maintenance expenses, or any marina capital outlays, and neither maintenance expenses nor capital outlays shall be funded out of marina operation costs
- Marina operation costs include those tasks necessary to run the marina on a day-to-day, week-to-week, or month-to-month basis, as well as during emergency situations. Marina operation costs include normal staffing operation personnel costs, operations contracts, and day-to-day supply costs. Marina operation costs include the following marina activities: administration, implementation of rules and regulations, customer service, emergency planning, berth management, general staffing, security, utilities, and routine janitorial and house- or yard-keeping
- Examples of marina operation costs can include, but are not limited to, collecting berthing fees, administering transient boat slips, providing boat tenant customer relations, paying bills, patrolling grounds and parking facilities, cleaning restrooms and buildings, removing trash, pumping-out waste tanks, fueling boat gas tanks, and mowing/pruning facility landscaping.

2. Marina Maintenance Expenses

- Marina maintenance expenses provide a benefit in the year that they occur
- Marina maintenance expenses are marina income statement items
- Marina maintenance expenses do not include any marina operation costs, or any marina capital outlays, and neither operation costs nor capital outlays shall be funded out of the marina maintenance budget
- Marina maintenance expenses include those actions needed to keep the marina capital facility in a condition that will permit functional, convenient, and safe use, and that will allow the marina facility to achieve its expected life. Marina maintenance expenses include activities for the recurring upkeep of operational assets that are necessary to keep the marina assets in their usual condition. Marina maintenance expenses include scheduled, as well as unscheduled, activities. Marina maintenance expenses include normal staffing maintenance personnel expenses, maintenance service contracts, and parts expenses. There are several types of maintenance activities (these definition categories are not exclusive – a task may fit within more than one category) as follows:
 - Repair maintenance – work conducted to restore a damaged, broken, or worn-out capital facility or component to its normal operating condition. (Selected repair maintenance items that are deferred and involve “major” expenditures could be classified as capital outlays)

Preventative maintenance – maintenance that is scheduled, including servicing, repairing, inspecting, adjusting, and/or replacing parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the asset and help reduce the need for large capital outlays for deferred maintenance. (Selected preventative maintenance items that are deferred and involve “major” expenditures could be classified as capital outlays)

Cyclic maintenance – maintenance that is regular, but typically larger in scope and less frequent. Cyclic maintenance is conducted to ensure that the marina continues its serviceability. (Selected cyclic maintenance items that are deferred and involve “major” expenditures, could be classified as capital outlays)

Annual maintenance – maintenance that is performed to maintain serviceability, or repair failures, during the year in which they occur. (Selected annual maintenance items that are deferred and involve “major” expenditures, could be classified as capital outlays).

- Most marina maintenance expenses are not capital outlays as they are costs for normal maintenance and upkeep necessary to keep marina assets in their usual condition. Maintenance expenditures are recurring in nature, and involve relatively small amounts at each occurrence. Routine maintenance costs are usually performed on a regular, predetermined schedule (daily, weekly, monthly, or yearly) to ensure the marina is safe, and serviceable, and to reduce or eliminate immediate risk
- Examples of marina maintenance expenses can include, but are not limited to, smoothing uneven dock surfaces, repairing toilets, replacing loose bolts, tightening cleats and other hardware, performing minor re-

graveling or re-grading, replacing selected dock materials, repairing selected walkway surfaces, replacing selected signs, changing light bulbs, repainting selected buildings, removing silt from a launch ramp, and power-washing a concrete dock surface.

3. Marina Capital Outlays

- Marina capital outlays provide benefits that extend beyond the year in which the outlay is made, and provide benefits for more than one accounting period
- Marina capital outlays are credited to the appropriate asset account on the balance sheet, and are depreciated over the useful life of the item. The Capital Outlay Reserve Account is generally for depreciating marina property. Marina capital outlays, however, do not include outlays that would be used for ultimate facility replacement
- Marina capital outlays do not include any marina operation costs, or any marina maintenance expenses, and neither operation costs nor maintenance expenses shall be funded through the Capital Outlay Reserve Account
- There are several different kinds of marina capital outlays, most of which have long life spans. Marina capital outlay items include the major building, facility, and service components, systems, and equipment. Capital outlay items can include major safety features and major regulated changes. Marina capital outlays generally have an expected useful lifespan that will vary according to the item quality and specific marina conditions. The useful life of marina capital outlay items generally comes to an end when the cost of maintenance is no longer worthwhile because it will not extend the asset useful life by a reasonable period of time

- Some marina maintenance type items may be classified as capital outlays that are larger in nature, and less frequent, or less regular in occurrence, conducted to ensure that the marina continues its serviceability. Marina capital outlays can include certain major maintenance items such as repairs or renovations, and major replacements and upgrades (with “major” being defined as more than \$5,000 in cost, per item), which have benefits that extend beyond the current fiscal period, and that cannot be easily paid for out of annual maintenance budgets. Capital outlays, for purposes of the Capital Outlay Reserve Account (not necessarily for purposes of the Internal Revenue Service) thus may include on a case-by-case explained basis, major repair and maintenance, major deferred cyclic, or major deferred annual maintenance expenses that exceed \$5,000 in cost. All major maintenance-type expenses classified as capital outlays, however, shall be especially singled out, and line-item explained, by the borrower
- Examples of marina capital outlays can include, but are not limited to, refurbishing and replacing docks; expanding the number of berths; upgrading lighting, electrical and fire equipment; replacing faulty dock flotation and fuel dispensers; improving parking lots, boat launching, and security systems; adding new dock gangways; performing marina dredging; improving building facilities, restrooms, moorings, and the harbormaster’s office; re-painting the entire marina; adding new dry storage, showers, fuel docks, stores (convenience, bait shop, deli, restaurant, boat service center, and chandlery); expanding landscaping, picnic, and camping facilities; making major rip-rap repairs; and implementing necessary major regulatory

improvements (such as compliance with the Americans with Disabilities Act or the addition of sewage pump-outs). There are several types of capital outlay examples (these example categories are not exclusive – an example may fit within more than one category) as follows:

Major deferred maintenance – Deferred maintenance costs that are classified as capital outlays result from delaying, or putting off, routine repairs or preventative maintenance, leading to the deterioration of performance, increased costs to repair or maintain, and a decrease in asset value. Capital outlays include costs that are major deferred maintenance costs that exceed \$5,000 in value. An example of major deferred maintenance is if a marina had to replace an entire dock section because of a problem with uneven flotation that was not corrected in a timely manner. Other examples of major deferred maintenance include major re-graveling or re-grading a parking lot, major replacing of deck materials, major repairing of walkway surfaces, major replacing of signs, or major repainting of facilities. Major maintenance considered capital outlays also may include major costs to restore a damaged, broken, or worn-out capital facility or component

Partial replacement – Partial replacement is a capital outlay, such as substitution or exchange of an existing marina facility component with one having essentially the same capacity and purpose, for example, replacing a dock section that has failed

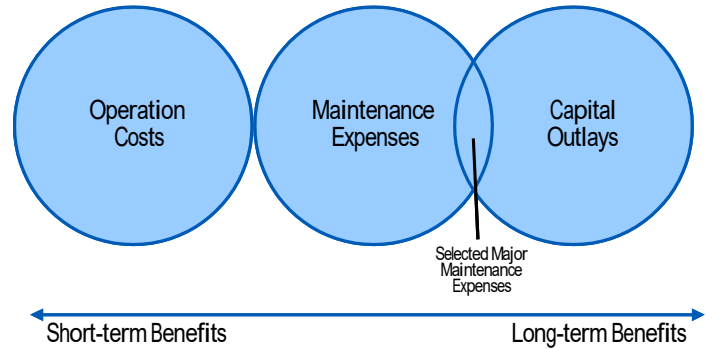
Partial reconstruction – Partial reconstruction is a capital outlay, which includes renovation of the marina to the original condition, capacity, and function, or improvement of the marina to provide additional service, for example replacing dock systems or bulkheads, adding launch lanes, additional berths, installing rest rooms, or installing a new pumpout station

Rehabilitation – Rehabilitation is a capital outlay such as renovation or restoration of a facility or component in order to restore functionality or extend the life of the marina. Rehabilitation may be primarily done to address deferred maintenance, for example, major repainting and re-roofing a building

New marina component – Construction, installation, or assembly of a new major marina component, or a significant alteration, expansion, or extension of the marina to accommodate a change of purpose is a capital outlay. A project that enhances or restores the value of the marina is a capital outlay. For example, adding a new launch ramp, a new lighting system, or security system, are capital outlays.

4. Relationship of Operation Costs, Maintenance Expenses, and Capital Outlays

Figure 1



5. Marina Gross Revenues

Gross marina revenues are defined as either actual gross marina operating revenues, or gross marina total revenues necessary for the marina to break-even on an income statement basis, whatever is greater.

III. Requirement 1: Marina Operations Report

1. Marina Operations Report Requirement

The loan contract standard agreement requires the marina borrower to operate the marina in an efficient and economical manner. To ensure that the marina is being operated accordingly, the marina borrower shall complete and submit to DBW a signed copy of the Marina Operations Report.

The Marina Operations Report prompts the marina borrower to ascertain whether they are meeting a series of operational performance requirements. In addition, the borrower shall provide their occupancy and berth rental rates, and the competitive berth rental rates for the six nearest facilities.

If the borrower is not in compliance with items in the Operations Report, the borrower shall explain the reasons, and any corrective actions that are, or will, be taken. There is space provided for these explanations on the Marina Operations Report, and additional sheets of paper may be used.

2. Marina Operations Checklist (Part A on “Master Checklist”)

In addition to the Marina Operations Report, the borrower shall complete the operations items in Part A of the Marina Operations, Maintenance, and Capital Outlay Master Checklist (see [Appendix A](#)). The marina features listed in Part A shall be inspected regularly.

To “meet standard” for these features, they shall be, (1) conducted regularly and properly, and (2) kept in a clean and sanitary condition. For example, litter shall be regularly collected, restrooms shall be kept clean and stocked, windows shall be cleaned, buildings shall be kept clean (inside and outside), and the waste pumpout system shall be serviced regularly.

3. Marina Operations Reporting

The marina borrower shall complete, sign, and submit the Marina Operations Report (see [Appendix B](#)) to DBW. Public marinas shall submit the report by August 1st each year with the annual loan payment, and private marinas shall submit the form by April 1st of each year, at the same time as the required Maintenance Budget and Capital Outlay Reserve Account Reports.

IV. Requirement 2: Marina Maintenance Budget

The marina maintenance budget requirement includes two components, (1) a budget component, and (2) a performance standard component. Procedures and requirements for each of these components are described below. The two components are necessary to ensure that the marina is maintained in an acceptable condition. Meeting only the budget requirement does not necessarily insure that the marina is kept to a reasonable maintenance performance standard, particularly if the marina is old and requires significant repairs each year. By meeting the planning, inspection, and reporting requirements, in addition to the budget requirements, DBW can be reasonably assured that the borrower's marina is performing at an acceptable maintenance level.

1. Marina Maintenance Budget Requirement

Annual maintenance expenses shall normally fall within a range of between six percent and ten percent of annual gross revenues, or the borrower shall explain why this percentage is either high or low. Annual maintenance expenses shall include the following:

1. Payroll, including benefits and employer taxes, for the share of staff time spent conducting maintenance, as previously defined in Section II. For example, if the harbor master spends ten percent of his/her time on maintenance, and a staff person spends fifty percent of his/her time on maintenance, the relative shares of those salaries and benefits shall be included in the maintenance expense line item
2. Equipment and material or supplies for maintenance use – either rental or purchase of tools, paint, wood, nuts, bolts, pipes, fittings, parts, etc.
3. Contract costs for maintenance and repair services – for example, payment to an electrician for repairs. Does not include contract costs for operational expenses – janitorial services or routine landscape care (such as mowing and pruning).

The marina borrower shall provide an actual fiscal year operations and maintenance (O&M) budget. This budget shall reflect the six percent to ten percent maintenance guidelines (with an explanation for any exceptions). The borrower shall identify discreet operations versus maintenance budget line items, as shown in the example of actual fiscal year operation costs and maintenance expenses (see [Appendix C-1](#)).

The marina borrower shall determine the percent of time spent on operation costs, maintenance and repair expenses, and capital outlays for each staff person in order to allocate personnel expenses to the maintenance budget. To support the allocation, the marina borrower shall provide job descriptions for all marina staff, with the percent of staff time allocated to marina operations, maintenance, and capital outlay line items. These job descriptions shall reflect the staff allocation in the actual fiscal year O&M budget.

The marina maintenance performance standards require the borrower to develop and follow a maintenance plan and schedule, conduct a full marina inspection, and report to DBW annually on the marina's condition. The marina borrower shall be responsible for the following:

1. Developing and following a maintenance plan and schedule. The maintenance plan shall include:
 - z A checklist (using the Marina Operations, Maintenance, and Capital Outlay Master Checklist, modified if necessary), with all items to be inspected
 - z Maintenance staff responsibilities
 - z Response time and procedures for unscheduled maintenance problems
 - z Procedures for maintenance records including records of inspections and repairs
 - z Maintenance staff training procedures
2. Conducting marina inspections – items may be inspected daily, weekly, monthly, seasonally, or annually
3. Completing maintenance in a timely fashion
4. Maintaining records of inspections and maintenance
5. Handling unscheduled maintenance problems and complaints in a timely fashion
6. Training marina maintenance employees.

Once each year, August 1st for public loans, and April 1st for private loans, the borrower shall submit the completed and signed Marina Operations, Maintenance, and Capital Outlay Master Checklist (customized to the marina, if appropriate) and the Marina Maintenance Report (see [Appendix D](#)). These forms require the borrower to provide the following:

- Gross revenues for the previous fiscal, or calendar, year (see [Appendix C-2](#))
- Annual fiscal year actual operations and maintenance expenses, including allocation of staff to maintenance
- Total maintenance expenses for the same fiscal year. Maintenance expenses shall include all items as described previously

- Maintenance expenses as a percent of gross revenues
- If maintenance expenses as a percent of gross revenues are below six percent, or above ten percent, the borrower shall provide a written explanation of why this line item is either high or low, particularly in relation to the previous and expected future year's maintenance line items, and the age and condition of the marina
- Job descriptions of all marina staff, including allocation of time for each staff person to operations, maintenance, and capital outlay tasks.

2. Marina Maintenance Checklist

The three-page master checklist, to be customized, as appropriate, and used for marina inspections, is included in Appendix A. Instructions are provided below.

Master Checklist Instructions

The marina supervisor shall conduct regular inspections of the marina using the Master Checklist. Inspections shall be conducted on a weekly, monthly, or seasonal basis by the marina staff. (Note: all items will not require inspection each time. The marina supervisor shall determine the appropriate inspection interval for their facility features). Once a year, the marina supervisor will report inspection results to DBW by submitting one completed Master Checklist for a full-facility inspection. The instructions for using the Master Checklist are as follows:

1. Note the inspection date and inspector(s)
2. For each item on the checklist, mark "Yes" if the item is in good or average condition (meeting standard), and "No" if it is not

3. It is the responsibility of the inspector to determine if the item “meets standard” – meaning the item is in good to average condition, there are no safety hazards, no loose parts, it is functioning properly, it is not broken, it does not have stains, cracks, or uneven surfaces, and it is not warping, sinking, leaking, or chipping, and does not have other problematic features
4. If the item does not meet standard, identify needed maintenance or repairs
5. When the maintenance is completed, note the maintenance date in the appropriate column on the checklist
6. Make any clarifying notes at either the time of inspection, or time of maintenance in the column provided
7. If the item is of a sufficient concern to require a larger capital outlay in the immediate, or near-term (current or next year), make a note in the capital outlay column
8. For any items that do not apply to the facility, place a “NA” in the “Yes” column
9. For any items that are relevant to the marina but are not on the checklist, include them in additional rows in the “Other” section of the checklist
10. For docks, as well as buildings, where there may be multiple structures in differing conditions, complete a checklist for each building or dock, or complete the checklist once for all features. Include descriptions in the notes column to identify which features have unique characteristics or problems
11. For the “Operations” items in Part A, note whether these features “meet standards”, particularly whether they are clean and being conducted regularly.

3. Marina Maintenance Reporting

The marina borrower shall complete, sign, and submit a Marina Maintenance Report (see Appendix D) to DBW each year. Public marinas shall submit the form by August 1st each year, and private marinas shall submit the form by April 1st of each year.

V. Requirement 3: Marina Capital Outlay Reserve Account

1. Marina Capital Outlay Reserve Account Requirement

The marina capital outlay reserve account requirement is intended to insure that the marina borrower sets aside a minimal amount for future capital outlay needs at the marina. The borrower shall ensure that at a minimum, a two (2) percent of annual gross marina revenues capital outlay reserve is deposited annually.

The borrower reserve account requirement is set at a minimum of two percent of annual gross marina revenues, but all marina borrowers are encouraged to set aside a higher percentage of annual gross marina revenues, as required, to meet actual specific marina needs. In general, aging marinas may require much more than the minimum two percent annual requirement. Also, there is a direct correlation between maintenance functions and resulting costs of capital outlay needs, so that the capital outlay reserve account may be inadequate at the two percent level if marina maintenance is inadequate.

The marina borrower shall establish a separate, interest earning, bank savings account specifically earmarked for the marina capital outlay reserve. The Capital Outlay Reserve Account is escrowed in a segregated and discrete account, but with administration and approval process for funding and withdrawal kept as straight forward as possible.

The marina borrower shall establish the capital outlay reserve account at marina operations start-up, or for existing marinas, after signing the loan contract. The marina borrower shall deposit funds monthly to the reserve account. The borrower shall deposit the two percent of annual gross marina revenues reserve account requirement by the end of each fiscal year.

The borrower may withdraw funds at anytime during the year for demonstrated capital outlay items that are in the Capital Outlay Budgetary Plan, or are specially explained and/or justified to DBW on an exception basis.

Capital Outlay Reserve Account Procedures

The borrower shall report once each year, by August 1st with the loan payment for public marinas, and by April 1st for private marinas on (1) the amount of monies deposited into the Capital Outlay Reserve Account as of the last day of the most recent fiscal year period, (2) the amount of funds withdrawn during the most recent fiscal year period, (3) total gross revenues for the fiscal year time period, (4) use of the funds for the fiscal year period by depreciable property items, as tied to the Capital Outlay Budgetary Plan, (5) a brief assessment describing the long-term condition and overall status of the marina, and (6) the projected marina capital outlays and marina cash flows over the next ten fiscal years.

Capital Outlay Reserve Account Process

The borrower shall spend capital outlay funds during the year in accordance with the individual marina reported Capital Outlay Budgetary Plan. Withdrawal of funds from the Reserve Account for capital improvement projects is subject to DBW approval. All capital outlays, by definition, shall be included in the marina's Ten-Year Capital Outlay Budgetary Plan. Withdrawals from the Reserve Account shall follow the plan, or the Borrower shall obtain special DBW approval for a capital item expenditure from the Reserve Account.

2. Marina Capital Outlay Budgetary Plan

The Marina Capital Outlay Budgetary Plan is a pro forma, ten-year marina cash flow analysis that incorporates planned capital outlay expenditure items. The Capital Outlay Budgetary Plan shall be updated by the borrower each year so that it provides an on-going, and updated ten-year capital outlay budget. The Capital Outlay Budgetary Plan is strictly tied to the capital outlay reserve requirement whereby long-term cash flow projections are tied to planned-for, or expected, marina capital outlays. The capital outlay reserve requirement is to provide for matching funds accumulation to the timing of the capital item needs. This entire capital outlay planning process (Capital Outlay Reserve Account and Capital Outlay Budgetary Plan) provides the borrower with an understanding of the future impact on marina cash flows of long-term capital replacements and improvements.

3. Example Capital Outlay Budgetary Plan

The borrower shall take an inventory of all depreciating marina property that will need to be replaced in the long-term. In the case of public marinas the borrower shall project out a maximum of 30 years, and for private marinas, the borrower shall project out a maximum of 20 years, or the life of the respective loans. The borrower shall determine for the next ten years the present condition, or state of the depreciating marina property, and shall estimate

as to when each component of the depreciating property will need to be replaced. The borrower shall then estimate costs of replacement for the capital item in the year of projected replacement. Finally, the Capital Outlay Budgetary Plan is to include expected funding sources for each capital outlay item (i.e., the Capital Outlay Reserve Account or alternative sources). If the future needed estimated capital outlay costs exceed the two percent minimum reserve requirement, the needed amount of extra funds shall be accumulated in the reserve fund.

It is the responsibility of the borrower to maintain sufficient funding in the Capital Outlay Reserve Account to meet the projected capital outlay requirements in the Capital Outlay Budgetary Plan, regardless of the two percent minimum requirement. Capital Outlay Reserve Account funds shall never be commingled with the operating or maintenance marina funds. [Appendix E](#) provides an example of projected capital outlay projects and [Appendix F](#) provides a ten-year projected marina cash flow that incorporates long-term capital outlay projections.

4. Marina Capital Outlay Reserve Account Reporting

The marina borrower shall complete, sign, and submit a Capital Outlay Reserve Account Report (see [Appendix G](#)) to DBW each year. Public marinas should submit the form by August 1st each year, and private marinas should submit the form by April 1st of each year.

VI. Summary of Responsibilities and Reporting

1. Marinas

Borrowers are responsible for a number of reports and information as a result of the Marina Operations, Maintenance, and Capital Outlay Requirements. These reports are summarized below:

- Completed and signed Marina Operations, Maintenance, and Capital Outlay Master Checklist (Appendix A)
- Completed and signed Marina Operations Report (Appendix B)
- Annual actual fiscal year operation costs and maintenance expenses (Appendix C)
- Completed and signed Marina Maintenance Report (Appendix D)
- Job descriptions for marina staff
- Projected Capital Outlay Projects (Appendix E)
- Ten Year Capital Outlay Budgetary Plan (Appendix F), and
- Completed and signed Capital Outlay Reserve Account Report (Appendix G)
- Response to the DBW site visit inspection Master Checklist (after DBW site visit only).

2. DBW

The Marina Operations, Maintenance, and Capital Outlay Requirements require oversight of borrowers by DBW Boating Facilities staff:

- DBW staff will periodically conduct a site visit and inspection of the borrower's facility. At the site visit, the DBW staff person will use the Operations, Maintenance, and Capital Outlay Master Checklist, and/or the marina's customized version of the checklist, to conduct the site inspection. At, or before, the site visit DBW staff will review the marina's Maintenance Budget and Capital Outlay Budgetary Plan for completeness. DBW staff will provide the borrower with a copy of the completed DBW inspection checklist, and the borrower shall submit the final checklist, with action dates, when all necessary deficiencies have been corrected, but at least within three months
- DBW staff will prepare and complete the Site Visit Checklist (see [Appendix H](#)) for each marina inspection completed
- Upon receipt of the marina borrower reports, DBW staff will review all reports and attachments and complete the Annual Reporting Checklist (see [Appendix I](#)). DBW staff will follow-up with the borrower on any items that are not submitted, are incomplete, or indicate that the marina is not operating or maintaining the facility adequately or fulfilling their capital outlay obligations.

3. Remedy for Violation of Requirements

The Marina Operations, Maintenance, and Capital Outlay Requirements are incorporated into the loan contracts. Non-compliance with the requirements in this document may result in a technical loan default. A borrower found to be in noncompliance of these requirements shall be given 180 days to remedy the problem(s). An occurrence of default shall exist if the borrower is not in compliance

within 180 days, and DBW may exercise all rights and remedies accorded to them by law. However, DBW also may choose to hire a contractor to remedy the deficiencies and to charge the borrower for such efforts. The borrower shall submit payment for the remedies work with the next loan payment following receipt of the invoice for correcting the deficiencies. Failure of borrower to submit payment shall also be an occurrence of default.

Marina Operations, Maintenance, and Capital Outlay — Master Checklist

Inspection Date: _____ Inspector: _____

Marina Feature	Meets Standards		Potential Next-Year Capital Outlay Item	Repairs Needed Now	Repair Completion Date	Notes
	Yes	No				
A Operation Issues For Operations						
1 Litter collection						
2 Trash/recycling collection						
3 Restrooms						
4 Shower facilities						
5 Laundry facility						
6 Mowing/pruning						
7 Buildings						
8 Windows						
9 Waste pumpout service						
B Waterside Conditions For Maintenance						
10 Breakwater						
11 Shoreline						
12 Rip rap						
13 Marina depth						
14 Channels						
15 Plumbing/water lines						
16 Hazard removal						
17 Fire suppression system						
18 Underwater dock conditions						
19 Buoys/navigation aids						
20 Fuel dispensing unit						
21 Fuel storage system						
22 Pumpout unit						
23 Pilings						
C Docks For Maintenance						
24 Decking/surface						
25 Dock framework						
26 Freeboard height						
27 Flotation						
28 Walers						
29 Tensioning rods						
30 Rub strips						
31 End pilings						
32 Metal fittings						
33 Power pedestals						
34 Transformers						
35 Switch gears						
36 Water system						
37 Storage lockers						
38 Gates/security system						
39 Handrails						
40 Lighting						

Marina Feature	Meets Standards		Potential Next-Year Capital Outlay Item	Repairs Needed Now	Repair Completion Date	Notes
	Yes	No				
D Gangways						
For Maintenance						
41 Decking/surface						
42 Hinges						
43 Slides						
44 Rollers						
E Walkways and Boardwalks						
45 Decking/surface						
46 Metal fittings						
47 Lighting						
48 Handrails						
49 Pilings/support						
50 Fishing piers						
F Boat Launch Ramps						
51 Ramp surface						
52 Ramp slope						
53 Debris/sediment						
54 Drop-offs/erosion						
55 Boarding floats						
56 Boat washdown area						
57 Signs						
58 Lighting						
G Marina Buildings						
59 Structural condition						
60 Paint						
61 Siding						
62 Insulation						
63 Windows						
64 Roof						
65 Doors						
66 Eaves/drainage pipes						
67 Walls/flooring						
68 Lighting						
69 HVAC systems						
70 Restroom fixtures/facility						
71 Shower fixtures/facility						
72 Laundry facility						
73 Vending machines						
H Parking/Access Roads						
74 Surfaces						
75 Paving/gravel						
76 Striping						
77 Curbs						
78 Wheel stops						
79 Drainage						
80 Signs						
81 Lighting						
82 Hazard removal						

Marina Feature	Meets Standards		Potential Next-Year Capital Outlay Item	Repairs Needed Now	Repair Completion Date	Notes
	Yes	No				
I Grounds						
For Maintenance						
83	Plantings					
84	Trees					
85	Lawns					
86	Sprinkler systems					
87	Lighting					
88	Signs					
89	Pay telephones					
90	Culverts/drainage					
91	Benches					
92	Planters					
93	Trash receptacles					
94	Recycling receptacles					
95	Fish cleaning station					
96	Hazard removal					
97	Equipment/tools					
98	Sidewalks/walkways					
99	Fencing/gates					
J Other						
100						
101						
102						
103						
104						
105						
106						
107						
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119						
120						

I certify that the inspection was conducted on the date specified above by qualified marina staff, and that all information on the marina condition and maintenance in this checklist is accurate, and complete and reflects the true condition of the marina.

Name: _____ Date: _____

Title: _____ Telephone: _____



Marina Operations Report

Small Craft Harbor and Recreational Marina Loan Programs

Facility Name:	
Facility Location:	Date of Report:
Contract No.:	Project Completion Date:
Amount Funded:	Loan Payoff Date:

Operations Report Requirements

For any items that are not checked, provide a brief explanation in the space provided at the end of this form, or on a separate piece of paper.

- The marina occupancy level for the last year was adequate to maintain positive cash flow. The average marina occupancy level was: _____
- The marina has a marketing or business plan to increase occupancy levels if it falls below a threshold needed to maintain adequate cash flow (and is implementing the plan(s) if occupancy is below that level)
- Berth rental rates provide an adequate marina financial return, reflect the value of the facility, and are near the current market rate for similar marinas in the region. Average monthly per linear foot berth rental rates* for this facility, and the six nearest competitive marinas in the region, are as follows:
 - a) This marina: _____
 - b) Facility: _____ Rate: _____ e) Facility: _____ Rate: _____
 - c) Facility: _____ Rate: _____ f) Facility: _____ Rate: _____
 - d) Facility: _____ Rate: _____ g) Facility: _____ Rate: _____

* The average monthly per linear foot rental rate can be calculated from berth rental rates. For example, for a marina with the following configuration the calculation is as follows:

		Total Feet	Total Cost
25 foot berths	50 @ \$125/mo.	25 x 50 = 1,250	50 x 125 = 6,250
35 foot berths	100 @ \$165/mo.	35 x 100 = 3,500	100 x 165 = 16,500
50 foot berths	20 @ \$200/mo.	50 x 20 = 1,000	20 x 200 = 4,000
TOTAL		5,750 feet	\$26,750

Average per linear foot = \$26,750/5,750 ft = \$4.65/foot

- Registers and accurate records are maintained for berth renters, including billing, payment, and insurance information for each vessel
- Marina hours of operation are prominently displayed. Marina staff are available daily, including peak season holidays. Marina staff, or emergency personnel, can be easily contacted on off-hours in case of emergency
- Marina staff are competent, trained, knowledgeable about boats and boating, and professional in appearance
- Marina staff are responsive to customers, and customer complaints are handled within a reasonable time frame
- The marina and tenants are in compliance with standards, as outlined in applicable federal, state, and local laws, rules, regulations, contracts, and restrictions
- Marina security is maintained to appropriate standards for the region. The marina security system is in place and operational, and police incidents at the marina are at levels similar to other marinas in the region
- The marina has a current hazardous materials management plan, and procedures outlined in the plan are followed
- The marina has, is developing, or has plans for ADA compliance (for publicly-owned facilities only)

Explanation of any operations issues:

I certify that the information provided in this report, and all supporting materials, are accurate and complete. I understand that false reporting or non-compliance could result in default of our DBW loan.

Name: _____ Date: _____

Title: _____ Telephone: _____

Example of Actual Fiscal Year Operation Costs and Maintenance Expenses

Annual Operation Costs and Maintenance Expenses 2002 Calendar Year (Fiscal Year)

Personnel	Total
Regular Salaries, Harbor Master	\$ 80,000
Overtime, Payroll Taxes, and Benefits, Harbor Master	10,000
Regular Salaries, Maintenance Personnel	30,000
Overtime, Payroll Taxes, and Benefits, Maintenance Personnel	6,500
Regular Salaries, Administrative Assistant	25,000
Overtime, Payroll Taxes, and Benefits, Administrative Assistant	4,000
	\$ 155,500

	Maintenance Share ^a	Maintenance Amount
Harbor Master	10%	\$ 8,000
	10%	1,000
Maintenance Personnel	60%	18,000
	60%	3,900
Total Maintenance Personnel		\$ 30,900

Operation Costs — Non-Personnel	
Office Supplies	\$ 1,400
Operating Supplies	2,700
Cost of Fuel Sold	50,000
Printing and Copying	1,200
Insurance (Property, Liability)	6,000
Accounting Services	12,000
Telephone	2,000
Fuel	500
Gas and Electricity	9,000
Sewers	1,200
Conferences and Seminars	1,000
Clothing Expenses	300
Association Memberships	700
Advertising	12,000
Janitorial Contracts	22,000
	\$ 122,000

Maintenance Expenses — Non-Personnel	
Tools	\$ 300
Service Contracts	4,000
Parts	100
Pipes and Fittings	150
Parking Lot Repairs	750
Key/Lock Repair	1,800
Boardwalk Maintenance	400
Misc. Repairs and Maintenance	2,000
	\$ 9,500

Total Operations and Maintenance	\$ 287,000
Total Maintenance Expenses (\$30,900 + \$9,500)	\$ 40,400
Percent of Gross Revenues	8.98%

Gross Marina Revenues	\$ 450,000
-----------------------	------------

(see Exhibit C-2 for example calculation)

a/ Allocation should be supported by job descriptions. The harbor master spends approximately ten percent of his/her time on maintenance duties. The maintenance worker spends approximately sixty percent of his/her time on routine operations (i.e. janitorial and housekeeping) and sixty percent of his/her time on maintenance as defined. The administrative assistant spends no time on maintenance.

Examples of Actual Fiscal Year Gross Marina Revenues (Sample Calculation)

Example 1: Annual Gross Marina Revenues – Fiscal Year 2001-2002 (Marina with Transfers for Operating Revenues)

Revenues	2001-2002
Charges for Services	
Monthly Berth Rents	\$ 389,332
Daily Berth Rents	23,743
Fuel and Lubricant Sales	105,600
Building Rents	55,734
Electric Submeter Fee	14,866
Miscellaneous Revenues	7,944
Total Operating Revenues	\$ 597,219
Other Revenues	
Discounts Taken	\$ 794
FEMA Grant	30,718
Total Other Revenues	31,512
Total Operating and Other Revenues	\$ 628,731
Cash Flows from NonCapital Financing Activities	
InterFund Lending Repayment	\$ (7,947)
Operating Transfers In	256,000
Operating Transfers Out	(12,160)
Net Cash Provided by (Used in) NonCapital Financing Activities	\$ 235,893
Total Gross Revenues	\$ 864,624
Two Percent of Total Gross Revenues	\$ 17,292

Example 2: Annual Gross Marina Revenues — Calendar Year 2002 (Marina with No Operating Transfers)

Revenues	2002
Charges for Services	
Monthly Berth Rents	\$ 189,256
Daily Berth Rents	12,455
Fuel and Lubricant Sales	22,988
Building Rents	15,824
Electric Submeter Fee	7,651
Miscellaneous Revenues	3,468
Total Operating Revenues	\$ 251,642
Total Gross Revenues	\$ 251,642
Two Percent of Total Gross Revenues	\$ 5,033



Marina Maintenance Report

Small Craft Harbor and Recreational Marina Loan Programs

Facility Name:	
Facility Location:	Date of Report:
Contract No.:	Project Completion Date:
Amount Funded:	Loan Payoff Date:

Maintenance Report Requirements

- Maintain and follow a maintenance plan and schedule:
 - Completed master checklist
 - Marina inspections are conducted regularly
 - Maintenance staff responsibilities are delineated and followed
 - Maintenance is completed in a timely fashion and unscheduled maintenance problems and complaints are handled responsively
 - Records for maintenance and inspection are maintained
 - Marina maintenance employees are properly trained

The following items are attached:

- Completed Operations, Maintenance, and Capital Outlay Master Checklist from a recent full inspection of the facility
- Actual Annual Fiscal Year Operation Costs and Maintenance Expenses with maintenance expense allocations
- Job descriptions for all marina staff, including allocation of time for each staff person to operations, maintenance, and capital outlay activities
- Marina maintenance expenses (specify time period: _____)
 - a) Gross revenues: _____
 - b) Maintenance expenses: _____
 - c) Maintenance percentage (b/a X 100): _____

Appendix E

Example of Projected Capital Outlay Projects

Number of Years	Year	Description	Estimated Amount
1	2003/4		\$0
2	2004/5		—
3	2005/6		—
4	2006/7	Dredging west basin	100,000
5	2007/8	Partial sidewalk replacement	34,000
6	2008/9	Dock vinyl bumper strip replacements	100,000
7	2009/10	Repair floatation on Dock B	125,000
8	2010/11	Wood decking repairs around buildings	75,000
9	2011/12	Painting all marina structures	8,000
10	2012/13	Gangway and gate repairs	35,000
Total projected for next ten years			\$477,000
Long Term Needs			
11		Telephone lines and cable TV connected	\$100,000
12		Plumbing and electrical system replacements	1,000,000
13		Marina basin dredging	400,000
Total long-term beyond ten years			\$1,500,000

Item Description	Funding Sources		
	Year #	Alternate Funding	Capital Outlay Account
Dredging west basin	4	\$—	\$100,000
Partial sidewalk replacement	5		34,000
Dock vinyl bumper strip replacements	6	100,000	
Repair floatation on Dock B	7	125,000	
Wood decking repairs around buildings	8		75,000
Painting all marina structures	9		8,000
Gangway and gate repairs	10	35,000	
Telephone lines and cable TV connected	11	100,000	
Plumbing and electrical system replacements	12	1,000,000	
Marina basin dredging	13		400,000
	Total	\$1,360,000	\$617,000

Appendix F

Example of Capital Outlay Budgetary Plan

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenues					
Charges for Services					
Monthly Berth Rents					
Daily Berth Rents					
Fuel and Lubricant Sales					
Building Rents					
Electric Submeter Fee					
Miscellaneous Revenues					
Total Operating Revenues	\$ 621,821	\$ 640,476	\$ 659,690	\$ 679,481	\$ 699,865
Other Revenues					
Discounts Taken	0	0	0	0	0
FEMA Grant	0	0	0	0	0
Total Other Revenues	0	0	0	0	0
Total Revenues	\$ 621,821	\$ 640,476	\$ 659,690	\$ 679,481	\$ 699,865
Expenses					
Wages and Benefits					
Utilities					
Contractual Services					
Tools and Supplies					
Repairs and Maintenance					
Total Operating Expenses	\$ 449,094	\$ 462,813	\$ 476,944	\$ 490,938	\$ 506,189
Operating Income (Loss)	\$ 172,727	\$ 177,663	\$ 182,746	\$ 188,543	\$ 193,676
Adjustments from Operating Activities					
Depreciation (Non-Cash Item)	0	0	0	0	0
Other Adjustments	0	0	0	0	0
Net Cash Provided by (Used in) Operating Activities	\$ 172,727	\$ 177,663	\$ 182,746	\$ 188,543	\$ 193,676
Cash Flows from NonCapital Financing Activities					
InterFund Lending Repayment	0	0	0	0	0
Operating Transfers In	255,035	250,379	245,584	268,645	250,557
Operating Transfers Out	0	0	0	0	0
Net Cash Provided by (Used in) NonCapital Financing Activities	\$ 255,035	\$ 250,379	\$ 245,584	\$ 268,645	\$ 250,557
Total Gross Revenues	\$ 876,856	\$ 890,855	\$ 905,274	\$ 948,126	\$ 950,422
Cash Flows from Capital and Related Financing Activities					
Fixed Asset Additions (Capital Outlay Projects)	\$ -	\$ -	\$ -	\$ (100,000)	\$ (34,000)
Long-Term Principal and Interest Debt Service	(410,225)	(410,225)	(410,225)	(410,225)	(410,225)
Net Cash Used in Capital and Related Financing Activities	(410,225)	(410,225)	(410,225)	(510,225)	(444,225)
Reserve Account Deposits					
Two Percent of Gross Revenues	\$ 17,537	\$ 17,817	\$ 18,105	\$ 18,963	\$ 19,008
Other Deposits to Reserve Account (Optional)				28,000	15,000
Total Deposit to Reserve Account	\$ 17,537	\$ 17,817	\$ 18,105	\$ 46,963	\$ 34,008
Net Increase (Decrease) in Cash and Cash Equivalents	\$ 17,537	\$ 17,817	\$ 18,105	\$ (53,037)	\$ 8
Reserve Account Balance	\$ 17,537	\$ 35,354	\$ 53,459	\$ 422	\$ 430

Appendix F

Example of Capital Outlay Budgetary Plan

	Year 6	Year 7	Year 8	Year 9	Year 10
Revenues					
Charges for Services					
Monthly Berth Rents					
Daily Berth Rents					
Fuel and Lubricant Sales					
Building Rents					
Electric Submeter Fee					
Miscellaneous Revenues					
Total Operating Revenues	\$ 720,861	\$ 742,487	\$ 764,762	\$ 787,704	\$ 811,336
Other Revenues					
Discounts Taken	0	0	0	0	0
FEMA Grant	0	0	0	0	0
Total Other Revenues	0	0	0	0	0
Total Revenues	\$ 720,861	\$ 742,487	\$ 764,762	\$ 787,704	\$ 811,336
Expenses					
Wages and Benefits					
Utilities					
Contractual Services					
Tools and Supplies					
Repairs and Maintenance					
Total Operating Expenses	\$ 521,929	\$ 537,834	\$ 553,816	\$ 571,087	\$ 588,467
Operating Income (Loss)	\$ 198,932	\$ 204,653	\$ 210,946	\$ 216,617	\$ 222,869
Depreciation (Non-Cash Item)	0	0	0	0	0
Other Adjustments	0	0	0	0	0
Net Cash Provided by (Used in) Operating Activities	\$ 198,932	\$ 204,653	\$ 210,946	\$ 216,617	\$ 222,869
Cash Flows from NonCapital Financing Activities					
InterFund Lending Repayment	0	0	0	0	0
Operating Transfers In	230,317	224,920	239,361	213,635	207,737
Operating Transfers Out	0	0	0	0	0
Net Cash Provided by (Used in) NonCapital Financing Activities	\$ 230,317	\$ 224,920	\$ 239,361	\$ 213,635	\$ 207,737
Total Gross Revenues	\$ 951,178	\$ 967,407	\$ 1,004,123	\$ 1,001,339	\$ 1,019,073
Cash Flows from Capital and Related Financing Activities					
Fixed Asset Additions (Capital Outlay Projects)	\$ -	\$ -	\$ (75,000)	\$ (8,000)	\$ -
Long-Term Principal and Interest Debt Service	(410,225)	(410,225)	(410,225)	(410,225)	(410,225)
Net Cash Used in Capital and Related Financing Activities	(410,225)	(410,225)	(485,225)	(418,225)	(410,225)
Reserve Account Deposits					
Two Percent of Gross Revenues	\$ 19,024	\$ 19,348	\$ 20,082	\$ 20,027	\$ 20,381
Other Deposits to Reserve Account (Optional)			20,000		
Total Deposit to Reserve Account	\$ 19,024	\$ 19,348	\$ 40,082	\$ 20,027	\$ 20,381
Net Increase (Decrease) in Cash and Cash Equivalents	\$ 19,024	\$ 19,348	\$ (34,918)	\$ 12,027	\$ 20,381
Reserve Account Balance	\$ 19,454	\$ 38,802	\$ 3,884	\$ 15,911	\$ 36,292



Marina Capital Outlay Reserve Account Report

Small Craft Harbor and Recreational Marina Loan Programs

Facility Name: _____	
Facility Location: _____	Date of Report: _____
Contract No.: _____	Project Completion Date: _____
Amount Funded: _____	Loan Payoff Date: _____

Capital Outlay Reserve Account Report Requirements

- Annual time period: _____
- Amount of funds deposited into Capital Outlay Reserve Account (CORA): _____
- Amount of funds withdrawn from CORA: _____
- Total gross revenues for annual time period: _____
- Minimum two percent requirement: _____
- Name and account number of CORA: _____
- Ten-year Capital Outlay Budgetary Plan is attached
- Capital outlay funds spent during the previous time period are identified in Plan and briefly described on Page 2 of 2



DBW Site Visit Checklist

Small Craft Harbor and Recreational Marina Loan Programs

Facility Name:	
Facility Location:	Date of Report:
Contract No.:	Project Completion Date:
Amount Funded:	Site Visitation By:
Loan Payoff Date:	Most Recent DBW Site Visit:

Marina Inspection Requirements

- Conduct marina walk-through inspection with master checklist
- Provide marina with copy of master checklist and identify any deficiencies
- Follow-up actions by marina conducted within three months (Date reported: _____)
- Review marina plan for documentation of:
 - Master checklist for marina inspections
 - Maintenance staff responsibilities and training
 - Maintenance and inspection records
- Review Capital Outlay Budgetary Plan
- Compare marina master checklist self-assessment with DBW inspection results

Overall short- and long-term condition of marina:



DBW Annual Reporting Checklist

Small Craft Harbor and Recreational Marina Loan Programs

Facility Name:	
Facility Location:	Date of Report:
Contract No.:	Project Completion Date:
Amount Funded:	Loan Payoff Date:

Operations Requirements

- Reviewed and approved Operations Report
- Operations follow-up completed (describe in attachment if required)
- Reviewed and approved operation items on Master Checklist

Maintenance Requirements

- Reviewed and approved Maintenance Report
- Maintenance follow-up completed (describe in attachment if required)
- Reviewed and approved maintenance items on Master Checklist
- Maintenance expenses fall between six percent and ten percent of gross revenues

Capital Outlay Requirements

- Reviewed and approve Ten-Year Capital Outlay Budgetary Plan
- Capital outlay follow-up completed (describe in attachment if required)
- Reviewed and approved assessment of marina long-term condition and status
- Capital Outlay Reserve Account meets minimum two percent requirement



DBW Annual Reporting Checklist

Small Craft Harbor and Recreational Marina Loan Programs

Facility Name:	
Facility Location:	Date of Report:
Contract No.:	Project Completion Date:
Amount Funded:	Loan Payoff Date:

Operations Requirements

- Reviewed and approved Operations Report
- Operations follow-up completed (describe in attachment if required)
- Reviewed and approved operation items on Master Checklist

Maintenance Requirements

- Reviewed and approved Maintenance Report
- Maintenance follow-up completed (describe in attachment if required)
- Reviewed and approved maintenance items on Master Checklist
- Maintenance expenses fall between six percent and ten percent of gross revenues

Capital Outlay Requirements

- Reviewed and approve Ten-Year Capital Outlay Budgetary Plan
- Capital outlay follow-up completed (describe in attachment if required)
- Reviewed and approved assessment of marina long-term condition and status
- Capital Outlay Reserve Account meets minimum two percent requirement

