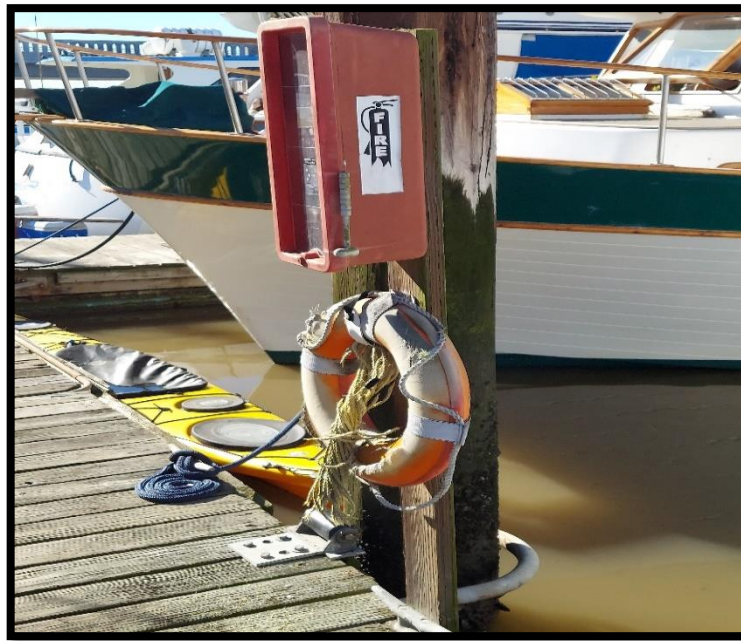


SINK OR SWIM: MOSS LANDING HARBOR DISTRICT

SUMMARY

Multiple safety and maintenance complaints prompted a review by the Monterey County Civil Grand Jury (MCCGJ), of the Moss Landing Harbor District (MLHD). This investigation found systemic problems in the district safety program and maintenance procedures, as well as a lack of communication and financial foresight. There are few formal procedures or processes, with most work performed on an “as needed basis.” Most safety complaints that we reviewed are related to maintenance concerns.

MCCGJ review in 2002 identified many of the same problems and some of their findings and recommendations from twenty years ago remain unresolved today. The 2021/2022 MCCGJ developed recommendations to address safety and maintenance concerns; lack of formal processes for filing and cataloging complaints and maintenance requests, and lack of a schedule of regular inspections. Safety should be a regular agenda item for Board of Commissioners meetings.

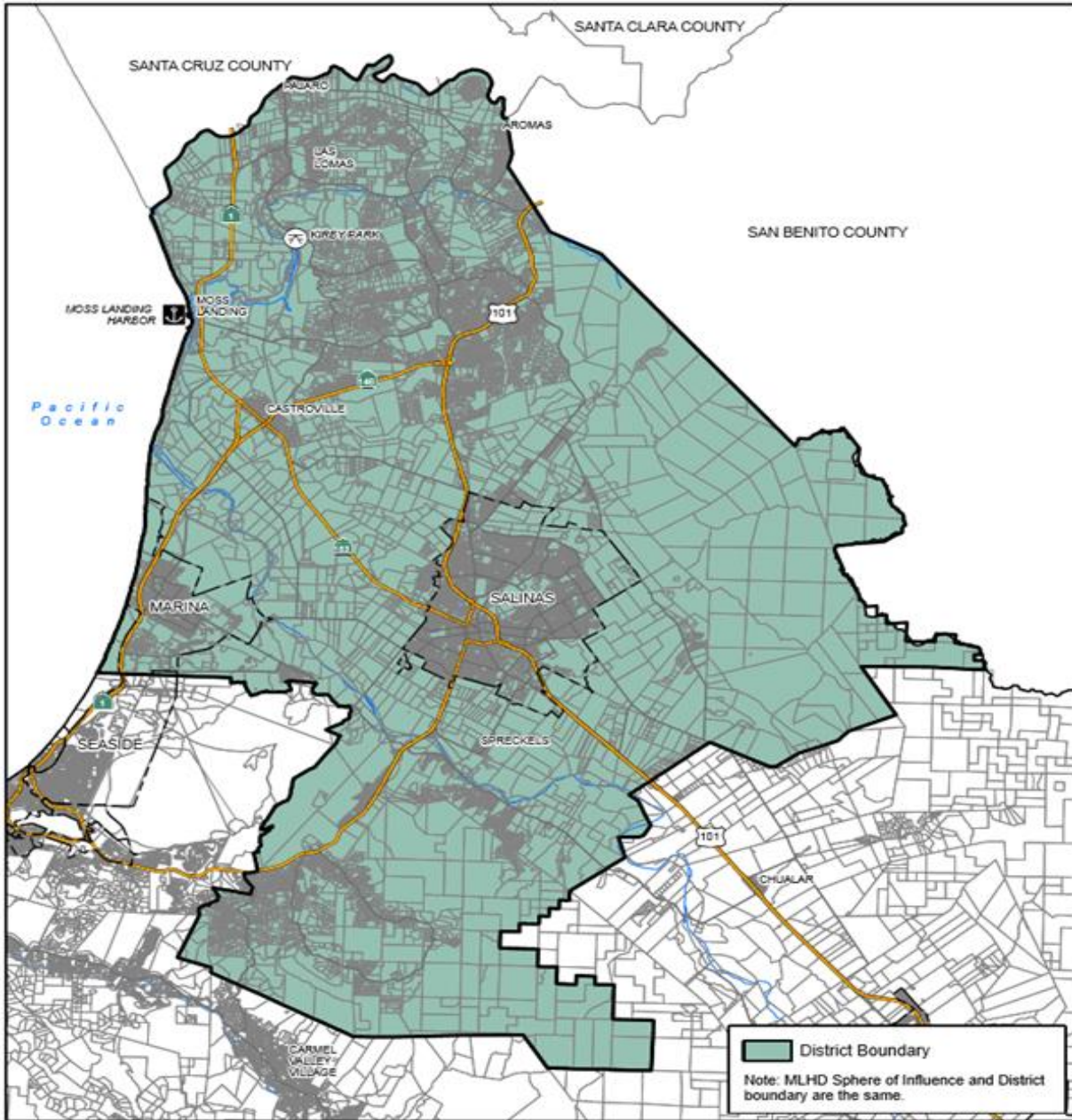


MLHD must improve its financial operations. The district should develop a capital improvement plan and establish a balanced budget while creating a reserve. The district should maximize its efforts to recover past–due berthing fees while adjusting its berthing fees to meet expenses.

Additionally, the district must ensure compliance with the Brown Act, and be open and transparent in its operations and communication.

GLOSSARY

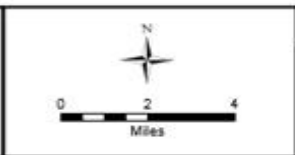
| | |
|-----------------|--|
| AB1234 | California Assembly Bill 1234, Ethics Training |
| ACoE | Army Corp of Engineers |
| BOC | Board of Commissioners |
| BOS | Monterey County Board of Supervisors |
| LAFCO | Local Agency Formation Commission |
| MBARI | Monterey Bay Aquarium Research Institute |
| MCCGJ | Monterey County Civil Grand Jury |
| MLH | Moss Landing Harbor |
| MLHD | Moss Landing Harbor District |
| MLML | Moss Landing Marine Labs |
| NH | North Moss Landing Harbor |
| PG&E | Pacific Gas & Electric |
| SH | South Moss Landing Harbor |
| TAMC | Transportation Agency of Monterey County |



LAFCO of Monterey County
 LOCAL AGENCY FORMATION COMMISSION

P.O. Box 1369
 Salinas, CA 99902
 Telephone (831) 754-3838

132 W. Galdran St., Suite 102
 Salinas, CA 99902
 FAX (831) 754-3831



SPECIAL DISTRICTS

MOSS LANDING HARBOR DISTRICT

Sphere of Influence affirmed: 12/05/2016
 Map prepared: Feb. 2017

BACKGROUND

Moss Landing is rapidly switching identities. The historic town is seeing its commercial fishing dominance challenged, as MLHD attracts marine research and ecotourism tenants.

A significant part of the harbor is occupied by Monterey Bay Aquarium Research Institute (MBARI), Moss Landing Marine Labs (MLML) and Gregg Marine, a company that develops and deploys marine drilling technology. There are 660 boat slips, which are occupied by research vessels, transient vessels, tour and charter boats, live-aboard vessels and slip tenants. The Harbor hosts a much larger number of commercial fishing boats and live-aboard vessels than either Monterey or Santa Cruz Harbors. In 2015, the National Marine Fishers Services listed Moss Landing Harbor (MLH) as the largest commercial fishing port in California, based on the weight of fish caught.

Located at the confluence of the Elkhorn Slough and Pacific Ocean, Moss Landing initially started as a whaling port in the late 1800s. Canneries later opened and Southern Pacific Railroad laid down tracks, which still run adjacent to the slough today.

MLHD was formed June 22, 1943 and is governed by a 5-member Board of Commissioners, each serving staggered 4-year terms. Thanks to updated dredging and stabilization of the harbor channel and the building of wharves and docks by the US Army Corp of Engineers, MLH was designated a year-round port of safe refuge. MLHD is California's largest special district (in square miles) with a population of 234,000. It extends from the Santa Cruz County line down to San Benancio and Corral de Tierra, off the Salinas-Monterey Highway, and east to the San Benito County line.

In 1951, the Elkhorn Yacht Club completed building approximately 60 boat slips and club room facilities in North Harbor. In 1966 California State University established MLML in Moss Landing and in the mid 1990's MBARI moved from the City of Pacific Grove to the South Harbor. Pajaro-Sunny Mesa Water District provides potable water and Castroville Community Services District provides sewer service to the MLH facilities.

The MLHD BOC stated that the historic “Little Baja” pottery store has been demolished to make way for a boutique 30-room inn on the waterfront. MLHD constructed a 9500 square foot commercial building in the North Harbor parking lot that remains vacant.

The North Harbor Improvement Project, which was completed in 2007, included a new 4-lane launch ramp, paving of the 5-acre site for parking, storm drains and a boat wash, a 900-foot public access wharf at the water’s edge, and a 110-foot visitor serving dock alongside the wharf.

The Elkhorn Slough Foundation estimates the impact of the harbor on the local economy in 2020 was: \$6 million from commercial fishing, \$7 million from recreational boating, \$1 million from charter boats, and a total of \$67 million from MBARI, MLML and The Synergy/Large Lithium Battery site.

METHODOLOGY

The Civil Grand Jury employed several methods of investigation of the MLHD. Initially, we gathered public documents pertaining to all aspects of MLHD via extensive internet searches as well as requested documents obtained from MLHD. We held several interviews. Finally, we performed two tours, one by boat and the other an impromptu walking tour of North Harbor docks and portions of South Harbor.

DISCUSSION

Twenty years ago, MLHD had 10 staff. Now MLHD has a staff of eight, with two maintenance worker vacancies. Berthing fees have steadily risen from \$5.40/linear foot in 2002 to \$8.40/linear foot in 2021. The budget for maintenance has fluctuated from a low of \$35,000 in FY 2017 to \$90,000 in FY 2020 but lowered to \$75,000 for FY ending June 30, 2021. \$2.5 million is held in reserve for periodic dredging. There is no evidence MLHD has developed a capital improvement plan or a long-term maintenance strategy.

One of the recommendations from the 2002 MCCGJ report was that the district develop and follow a comprehensive financial business plan to serve as an overall plan

for running the district. The MLHD response to the MCCGJ 2002 report stated that “Efforts would be made to better *memorialize* the unwritten plan...so although a general “master plan” has been implemented, it would be misleading to create a false sense of security in a more specific plan, only to have new regulations undermine the foundation of the plan. The district knows why it is experiencing a thin financial condition and is moving in a direction they hope will improve that condition.” Twenty years later, the memorialized plan has never been documented.

Two thirds of total revenue come from berth rental (\$2.54 million of total revenue of \$3.546 million.) The 2002 MCCGJ reported that while the district had raised berthing fees and taken measures to collect delinquent fees, it still did not have sufficient funds to finance long term maintenance or to address safety issues and periodic dredging.

The Elkhorn Yacht Club (a social club based in North Harbor for boat and non-boat owners) has an informal relationship with MLHD. The Elkhorn Yacht Club Port Captain, who lives close by and walks the North Harbor docks daily, is available as a source for observing and identifying the harbor safety conditions. However, this potential resource is not utilized by the district.

MCCGJ found that the harbor pump-out facility has failed in the past, causing slip tenants to find alternate harbors in which to discharge boat waste. There exists in South Harbor a mobile, pump-out barge that is no longer in service. Additionally, berth tenants are not notified when the pump-out facility is out of service or when service will be restored.

The district should establish a board safety committee, including a berth renter and a Yacht Club officer as advisory members. A written complaint log and a report on repairs done is mandatory to help develop a capital improvement plan and budget for on-going safety and maintenance needs.



BOC meetings have been observed to be informal, creating possibilities for violations of the Brown Act. BOC meeting notices are only posted outside the South Harbor office and the website is not updated in a timely manner. Given the large geographic size of the MLHD, it is unclear if the BOC is focused enough on the best interest of the harbor. Currently only one Commissioner has a boat in the Harbor.

MCCGJ recommends long-overdue changes to address these issues. The BOC should complete a comprehensive strategic planning study, a capital asset reserve study, a comprehensive Harbor safety review and a maintenance and replacement plan for harbor facilities. Board members need to attend Brown Act training and AB (Assembly Bill) 1234 Ethics training every two years. All board members must receive governance training when newly elected and existing board members receive ongoing board governance training.

Boat owners should have certificates of liability insurance, naming the harbor as additionally insured, to guarantee seawater worthiness of the vessel and with the goal of eliminating derelict boats.

FINDINGS

- F1** MCCGJ found that MLHD conducted a comprehensive Strategic Plan for the District in the 2002 MCCGJ report.
- F2** MCCGJ was unable to verify MLHD completed a comprehensive capital asset reserve study to establish capital reserves and replace aging District facilities over time.
- F3** MHLHD has not completed a comprehensive maintenance and replacement plan for the harbor facilities.
- F4** MLHD maintenance is conducted on an “as needed” basis, reacting to verbal complaints from slip tenants or staff observations.
- F5** The Sea Engineering, Inc.” Post-Tsunami Report”, dated February 2, 2022, validated many of the MCCGJ findings.
- F6** MHLHD lacks a formal process for reporting complaints received and/or data on the number, type, and resolution of complaints.
- F7** MCCGJ was unable to verify MLHD maintains a comprehensive maintenance log or database.
- F8** MHLHD fails to distribute copies of the 60 District Ordinances to all slip tenants. However, the District Ordinances are available on the district website.
- F9** MLHD fails to enforce District Ordinances uniformly.
- F10** MLHD lacks a formal process for tenants to submit requests and receive written board approval for personal modifications to the docks.
- F11** MLHD does not require tenants to procure boat liability insurance.
- F12** MCCGJ observed boats are in disrepair at the harbor that may not be seaworthy.
- F13** MLHD lacks any pump out facilities, showers, laundry, or paved and stripped parking areas designated for tenants at North Harbor.

- F14** MCCGJ observed safety equipment (life rings and ropes) that are in disrepair and require replacement.
- F15** MCCGJ did not find safety ladders placed appropriately to allow people to get out of the water safely.
- F16** MLHD BOC fails to consistently post the board agenda outside South Harbor office and does not post in any location of North Harbor.
- F17** MLHD fails to update BOC agendas on the webpage in a timely fashion.
- F18** MCCGJ verified that current board members had received Brown Act classes, AB 1234 ethics training, and board member receiving governance training from the California Special Districts Association or other qualified organization.
- F19** MCCGJ found MLH experiences recurring failures of the pump-out facility, forcing slip tenants to sail to other harbors to clean out waste. MLH does not post notices of the outages nor when service would be available again.

RECOMMENDATIONS

- R1** By December 31, 2022, MLHD contract with a qualified consultant to complete a comprehensive Business/Strategic/Marketing plan.
- R2** By December 31, 2022 MLHD should complete a plan to implement the district facilities and replacement plan.
- R3** By December 31, 2022 MLHD contract with qualified consultant to conduct a comprehensive maintenance study and develop a replacement plan.
- R4** By October 1, 2022, MLHD develop and adopt procedures to track complaints and tenant maintenance requests.
- R5** By October 1, 2022, MHL D distribute copies of all District Ordinances to all tenants, current and future.
- R6** By December 31, 2022, MHL D adopt a formal process for tenants to request dock modifications and approval by the board.
- R7** By December 31, 2022, MHL D implement an ordinance requiring all slip tenants to show proof of valid boat liability insurance, naming MLHD as additionally insured.
- R8** By September 1, 2022, MHL D inspects all existing safety equipment and make repairs and replacements, as necessary.

- R9** By March 1, 2023, MHLHD should require all board members to attend Brown Act classes, AB 1234 Ethics Training, and Board governance training.
- R10** By December 31, 2022, MLHD should form a committee with North and South harbor tenants.
- R11** By September 1, 2022, MLHD should post BOC meetings, agenda packets on the South Harbor bulletin board and in a prominent location at North Harbor. MLHD should post BOC meeting minutes in a timely manner to enhance transparency.
- R12** By December 31, 2022, the MLHD install required safety equipment on the docks.
- R13** MLHD should ensure continuous operation of pump-out facilities available at the harbor.

RESPONSES REQUIRED

Pursuant to Penal Code §933 and 933.05, the Civil Grand Jury requests responses from the following governing bodies within 90 days:

- Moss Landing Harbor District
Findings: F1-19
Recommendations: R1-13

INVITED REPOSSES

- Elkhorn Yacht Club
Findings: F1-19
Recommendations: R1-13

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

BIBLIOGRAPHY

- (1) 2002-2003 Monterey County Civil Grand Jury Report, “Moss Landing Harbor District”
- (2) “As Moss Landing reinvents itself,” The San Jose Mercury News, 12.30.2018
- (3) MLHD Agenda Items: Associated Pacific Constructors Moss Landing Pile Replacement 10/5/2020, Boyd Asphalt Services singular parking lot slurry 10.27.21
- (4) Boundary Map of the Moss Landing Harbor District, LAFCO February 2006
- (5) California Coastal Commission CDP Hearing 11.26.2019, “3-19-0340 Moss Landing Pathway”
- (6) California Code of Regulations, Section 4405, “Working Over Water,” re: dock ladders
- (7) California Legislative Information, Harbors and Navigation Code (NHC), Division 6, Harbors and Ports (1690-1699), Article 1. Legislative Findings (1690) and Article 2. Jurisdiction and Powers of the Board (6270-6276).
- (8) “The Changing Face of Moss Landing,” Santa Cruz Sentinel 12.22.2018, updated 09.20.21, Hannah Hagemann. Reprinted Monterey Herald 12.20.18.
- (9) County Office of Economic Development, Caroline Pomeroy, Ph.D. and Michal Dalton, Ph.D.
- (10) “Draft Environmental Assessment and 404 (b)(1) Analysis for MLHD Maintenance Dredging,” U.S. Army Corp of Engineers, San Francisco District, May 2020.
- (11) Job Description Harbor Master and Staff
- (12) LAFCO Moss Landing Harbor District Report 2021
- (13) “Electronic Latitude: Local Cruising Destinations—Moss Landing Harbor,” Tom Burden 06.01.2020. [latitude 38.com](http://latitude38.com),
- (14) Maintenance Request Slips 01.-16.2019 through 01.02.20--average 25-30/month
- (15) Maintenance Request Slips January through May 13, 2021, average 20+/month
- (16) Moss Landing Chamber of Commerce info@mosslandingchamber.com
- (17) Moss Landing Community Plan, November 2020 draft, www.co.monterey.ca.us/home/showpublisheddocument/97823/637400098590900000

- (18) Moss Landing's Live-aboard Exist by Their Own Rules," Monterey County Weekly, 10.19.2006, Stuart Thornton
- (19) MLHD www.mosslandingharbor.dst.ca.us
- (20) MLHD "Applications for Berthing-Non Liveboards
- (21) MLHD: "Budget FYE 06.30.21 (comparing FY 06.30.2015 through FYE 06.30.21)
- (22) MLHD Fee Schedule Revised July 1, 2016, Table 20.10
- (23) MLHD General Safety Policies for employees
- (24) MLHD Independent Auditor's Report and Financial Statements FYE 2018, 2019, 2020
- (25) MLHD Ordinance Code
- (26) MHL D Organization Chart (shows 14 employees, but only ten listed by name and two open maintenance positions.
- (27) MLHD Responses to 2002 MCCGJ Report; "Moss Landing Harbor District."
- (28) MLHD Staff Report 12.15.21 "Pending Projects" [three of four on hold or in permit processing; fourth cancellation of contract with Mahoney & Associates (MHL D's Listing Agent for North Harbor commercial building)
- (29) Resolution No. 99-1 (11.19.1999) Approval of By-Laws/Election of Officers for MLHD Financing Company
- (30) ROBSON Forensics "Marina Drownings, Life Rings, and Safety Ladders"
- (31) ROI Safety Services Invoice "Annual Safety Training (04.27.21) for Onsite Construction Safety, Fall Protection, Electrical Safety, Ladder, Caught In-Between (HAZCOM)
- (32) San Mateo LAFCO Report on San Mateo County Harbor District (07.15.2015)
- (33) "Socioeconomics of the Moss Landing Commercial Fishing Industry," Report to Monterey County
- (34) UFC 4-152-01 (January 2017) Pg. 7-9, "Safety Ladders and Life Rings"
- (35) U.S. Government Publishing Office, Congressional Record (Bound Edition), Vol. 153 (2007), Part 21, Pgs. 29151-29152, "60th Anniversary of the Moss Landing Harbor District"