

Dear Deputy Director Fernandez,

I write in response to your letter dated December 19, 2023 notifying the University of an alleged breach of the Agreement for Financing and Operation of the Cal Poly Humboldt Boating Instruction and Safety Center (HBAC). As explained in prior conversations and correspondence, the University is not in breach of the Agreement, and therefore, no cure or restoration of activities is required under the Agreement. DBW is mistaken in its assertion that the University “has not fulfilled its commitment to boating instruction and safety training at the [HBAC].” The Agreement requires that the University provide two categories of activities:

- Boating and water safety instruction for the general public in addition to students, faculty and staff of University.
- Recreational services for the general public consistent with University rules, provided that such use does not interfere with the primary boating and water safety instructional activities.

There is no dispute that the University engages in and provides both categories of activities. As a threshold matter, DBW has long been in possession of records and reports demonstrating the University’s ongoing engagement in these activities and provision of these services. The Cal Poly Humboldt Sponsored Programs Foundation submits annual grant reports to DBW identifying the activities and programs offered by the HBAC from the prior year, including boating safety courses. While DBW claims that the University provides “negligible [HBAC]-offered public access and boating services,” the numbers and the facts show otherwise. In the last two years alone, the HBAC has offered the following boating and water safety courses:

- Introduction to Kayaking
- Introduction to Stand Up Paddling
- Introduction to Canoeing
- Whitewater Rafting
- Kayak Rolling
- Paddle Strokes
- Kayak Rescue and Safety
- Sailing
- Youth Aquatics Camp
- Junior Sailing School
- Whitewater Kayaking
- Multi-Aquatic Paddle

These courses served 823 individuals in 2022 and 516 individuals in 2023, which represents drastic growth from COVID-impact years and are comparable to prior years: 2021 (70 – Covid impacted); 2020 (124 – Covid Impacted); 2019 (862); 2018 (1,190). The University also recently established a three-way cooperative partnership with a nonprofit group called Our Wilderness Now and the Trinidad Coastal Land Trust. Through this partnership, two events were put on in 2023 with 163 participants, primarily families with elementary-aged children who had never kayaked before. Participants received a lesson on recreational boating safety and were guided in kayaks from Moonstone Beach up Little River in Trinidad, California.

As to recreational activities, and as explained in the grant reports referenced above, the HBAC offered a number of non-safety related recreational services, including equipment rentals, Get Out and Play Day, competitive activities and events, sailing ground school, and tides and currents seminar. For your reference, the University has attached the last six years of grant reports detailing these activities, including photographs from HBAC boating safety classes that were shared with DBW as part of the 2023 grant report. See Exhibit A (Grant Reports), Exhibit B (Pictures from 2023 Grant Report).

In addition to what is set forth in the grant reports, the University offered an array of additional, recreational activities, such as the following activities in the 2022-23 fiscal year:

- Intro to Rock Climbing: 3 courses, 20 participants total
- Climbing Event Nights: 3 nights, 67 participants total
- CPR/First Aid/AED: 4 courses, 28 participants total
- Wilderness First Aid: 1 course, 29 participants
- Wilderness First Responder: 1 course, 23 participants
- Wilderness First Responder Recert: 1 course, 20 participants
- Surfing: 10 courses, 95 participants total
- Backpacking: 12 courses, 86 participants total
- Dayhikes: 14 hikes, 76 participants total

These events have been a resounding success in the community, as over 1,300 individuals participated in these HBAC activities in 2022 and 1,700 individuals in 2023 (for context the most recent population of Eureka is approximately 26,129, [US Census Bureau](#)). These numbers are particularly impressive given the fact that the HBAC is largely unable to offer programming from November-March due to challenging or unsafe winter weather conditions.

The University continues to offer these recreational services in good faith, including equipment rentals, despite those activities operating at a significant financial burden to the University. For example, from July 2021 to the present, the University has spent over \$44,000 on student staffing for equipment rentals, while those rentals have only brought in \$20,801 in revenue for approximately 691 rentals. To the extent DBW asserts that the Agreement requires that the University *exclusively* use the HBAC for those activities, the Agreement has no such language. While it provides that the University “shall operate the PROJECT as a Boating Instruction and Safety Center,” this does not mean that the University cannot utilize portions of the HBAC for other University purposes. There is no question that the University operates the project as a Boating Instruction and Safety Center. Any other University use has no adverse impact – in fact no impact at all – on the HBAC’s boating instruction and safety activities, as demonstrated by the extraordinary number of individuals served by HBAC over the last several years. Moreover, such an interpretation would effectively require the University to leave numerous offices, conference rooms, and other storage space empty and unused, as HBAC has *never* had the demand for boating and recreational services that would require anywhere close to 100% utilization of the HBAC for those activities.

DBW’s new position is curious given DBW’s own actions in the construction of the HBAC. From opening day, the HBAC has proudly served as the home of the University’s Women’s Rowing Team, as *DBW constructed the HBAC* with locker rooms for the University’s crew teams. So, the University was surprised to see that DBW now objects to “private club rowing and storage of private club vessels.” To be clear, there are no “private” rowing teams using HBAC – only University teams. Furthermore, the University has been openly using the HBAC for other University uses for years without any objection from DBW. In the campus’ press release on the opening of the HBAC, the University stated that it was now a home to the rowing team and HBAC’s “classrooms and conference facilities are being used for

extended education classes and are available for rent to community groups and businesses.” See September 27, 2007 Campus Press Release. Over the course of the Agreement, conference room space has been used by a variety of public and other community groups for non-boating or recreational activities, such as the U.S. Environmental Protection Agency and the Army Corps, state and local representatives including meetings with leaders of tribal communities, the City of Eureka, and more. And the University has changed its approach in the last two years and now hosts these community events free of charge for these groups. To the extent that DBW is changing its position on how the University may use the HBAC under the Agreement, DBW has long since waived that interpretation.

Finally, as to DBW’s request for certain financial records, the University has attached in Exhibit C contracts and provided information herein reflecting investments and modifications that the University has made to HBAC, as follows:

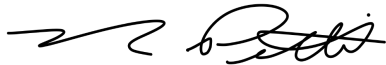
- External Contracts for Repairs, Modifications, and Improvements from December 2022 to present:
  - Contract No. 1128168CN, dated January 9, 2024: **\$36,700**
    - Consultant services pertaining to the repair of HBAC balconies
  - Contract No. 1128167CN, dated November 22, 2023: **\$77,650**
    - Architectural services relating to the repair of HBAC balconies
  - Contract No. 1128166CN, dated November 8, 2023: **\$15,000**
    - Structural engineering services relating to the repair of HBAC balconies
  - Contract No. 1127665PW, dated May 11, 2023: **\$23,552**
    - Flooring replacement for HBAC reception and office
  - Contract No. 1127229CN, dated December 7, 2022: **\$13,000**
    - Engineering services pertaining to balcony repair
  - Contract No. 1127228CN, dated December 14, 2022: **\$9,700**
    - Mechanical engineering and plumbing engineering services for modifications to office spaces, balcony, and lounge area.
  - Estimated Internal Labor Costs to date to support these six contracts: **\$207,669**
- University Work Orders for Repairs and Maintenance from 2017 to 2024:
  - Total value of work orders from 2017 to 2024 (excludes amounts previously listed): **\$302,278**
- Additional expenditures on investments and modifications:
  - Self-performed addition of boat rental office, completed in 2023, construction budget of **\$125,000**, (excludes contract amounts previously listed)
  - Replacement of building exterior balconies, to be completed in 2024, construction budget of **\$950,000** (excludes contract amounts previously listed)

This dispute seems to have stemmed from DBW’s objection to the University’s decision to move certain members of its Center Activities staff to on-campus locations (closer to their primary responsibilities) or to other locations in HBAC. Additionally, certain personnel from University Advancement were transitioned to underutilized office and conference room space in HBAC. To be clear, these administrative, personnel actions have had *no adverse impact* on the University’s provision of the services and activities demonstrated above. And, these decisions are entirely within the sole purview and discretion of the University. Even with the personnel relocations, the University still has staff serving HBAC and its activities, including a Field Coordinator (65% of duties), Outdoor Program Analysis (50% of duties), and an Associate Director of Campus Recreation (25% of duties). Indeed, since the start of the 2022 fiscal year, the University has expended nearly **\$165,000** in wages and benefits for that staff to perform HBAC-related job duties and nearly **\$27,000** on student staffing salary for equipment rentals.

The University is proud of the HBAC's services and activities as both a boating and recreational activities center and a connection between the University and Eureka communities, not to mention other state and federal agencies. The University did not hear back from DBW in response to a communication last March addressing DBW's concerns, so it did not go forward with scheduling a visit to the HBAC as had been previously discussed. While the University strongly disagrees with the DBW's assertion that the Agreement provides DBW the unilateral right to physically inspect the building (and the University particularly objects to DBW attempting to do so on short notice with DBW's counsel and without the University's counsel present), I encourage you to contact me to schedule a mutually convenient time for DBW staff to meet with campus administrators to visit HBAC, so that the parties can affirm a mutual understanding of the HBAC's uses and expectations under the Agreement. Furthermore, and perhaps in conjunction with a potential visit, the University encourages DBW to attend the Annual Humboldt Regatta on March 30, 2024 at the HBAC. The Regatta is an annual race hosted by the Women's Crew team and is a large community event. The Regatta is just one example of many of the great community and recreation-related events hosted by the HBAC and will provide DBW an opportunity to see the HBAC as an impactful community center.

If you have any further questions regarding this letter or the agreements between the University and DBW, please contact me directly.

Sincerely,



Dr. Nick Pettit, Executive Director of Athletics and Campus Recreation  
Cal Poly Humboldt

Exhibits A-C

cc: Mr. Dustin May, General Counsel, Cal Poly Humboldt  
Honorable Kim Berkel, Mayor, City of Eureka  
Mr. Miles Slattery, Manager, City of Eureka  
Mr. Reid Boggiano, Program Manager, State Lands Commission  
Ms. Kathryn Tobias, Senior Counsel, California State Parks  
Mark Johnson, Chief of Staff, Cal Poly Humboldt  
Frank Whitlatch, Vice President of Advancement, Cal Poly Humboldt  
Connie Stewart, Executive Director of Initiatives, Cal Poly Humboldt