

## **MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND JURY REPORT TITLED:**

### **MENDOCINO COAST RECREATION AND PARKS DISTRICT AND THEIR FIELD OF DREAMS**

The Mendocino County Board of Supervisors (BOS) appreciates this opportunity to respond to the above entitled report but cannot help but wonder why the BOS has been required to respond to all findings and all recommendations. The BOS has no authority and no oversight responsibility concerning the Mendocino Coast Recreation and Parks District (MCRPD) which is an independent special district. Only Findings F3 and F4 and Recommendation R4, which relate to BOS approval of a loan to the MCRPD, address issues within the purview of the BOS. For this reason alone, the BOS will be unable to agree with findings related to issues for which it has no responsibility.

Further, upon reviewing the findings it appears the Grand Jury has incorporated personal opinions and unsubstantiated statements into the report. California Penal Code section 916 provides that "Rules of procedure shall include guidelines for that grand jury to ensure that all findings included in its final reports are supported by documented evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors and that all problems identified in a final report are accompanied by suggested means for their resolution, including financial, when applicable."

Further, the Mendocino County Grand Jury Procedure Manual states: "All grand jury reports must include evidentiary support and a statement of findings and recommendations. Findings are statements of fact and conclusions derived from facts. Recommendations are actions suggested to address one or more of the findings. To present the strongest possible case to the public, the jury should carefully identify facts discovered in the investigation. Penal Code section 916." Accordingly, the BOS will be unable to agree with findings which incorporate personal opinions or statements that are not supported by evidence in the record.

#### **Pursuant to the request of the Grand Jury, the Board is responding to the following:**

- F1. There is evidence of continuing misfeasance regarding the financing of MCRPD, by Board action which neglects their fiduciary duties of transparency and fiscal responsibility to the taxpayers of MCRPD.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F2. The MCRPD's Board of Directives is not representational of the four tax districts.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F3. MCRPD has received County Treasury advances on Teeter funds (property tax funds) for at least the past four years by the Board of Supervisors Consent Calendar actions. The Grand Jury could not determine if the Teeter fund advances were comingled within the MCRPD budget. MCRPD requires and spends 2018 tax revenue in the 2017 budget year. This annual MCRPD need for advanced Teeter funds indicates a serious deficit in budget planning, and indicates serious concern for MCRPD's long term financial viability.

Disagree in part. While it is true that the MCRPD has been the recipient of loans from the County Treasury, the BOS is not aware of any evidence in the record that this indicates "a serious deficit in budget planning" or "serious concern for MCRPD's long term financial viability." As explained by the Auditor-Controller in his response to this finding, the annual loan amount in recent years has been \$50,000 which is a small percentage of the MCRPD's annual revenue. Further, the funds that are "loaned" to the MCRPD may be considered an advance on the property tax revenue to which the MCRPD is entitled. The loan is repaid upfront as the property tax is received by the County. MCRPD pays interest on the loan at a rate equal to the average rate of return for the County Treasury. Borrowing a portion of the property tax to which the MCRPD is due is the most efficient and cost effective method of assuring that the MCRPD has sufficient cash flow to meet its obligations prior to receipt of the property tax payments to which the MCRPD is entitled.

- F4. The County does not require or perform any type of audit on a special district requesting Teeter fund advances. Because MCRPD is operating in structural deficit, the Board of Supervisors and County Auditor may be abdicating a fiduciary duty to the taxpayer by not questioning recommendations that appear on the Consent Calendar to advance the Teeter funds.

Disagree. As explained by the Auditor-Controller in his response to this finding, the MCRPD is required to send a copy of their audit report to the Auditor-Controller. This is a requirement whether or not a district seeks to borrow a portion of the property tax due them. The BOS is not aware of any evidence that indicates the MCRPD "is operating in structural deficit." The BOS rejects the assertion that "the Board of Supervisors and County Auditor may be abdicating a fiduciary responsibility to the taxpayer by not questioning recommendations that appear on the Consent Calendar to advance Teeter funds." As explained in the response F3, every dollar loaned to the MCRPD is repaid with interest prior to any property tax funds being transmitted to the MCRPD.

- F5. THE MCRPD's annual audits have not been completed in a timely manner which prevents full public financial disclosure. The MCRPD's most recent audit, due June 30, 2016, was completed on February 8, 2017. MCRPD is currently delinquent on a capital lease and a note in the amount of \$200,000 plus interest.

Disagree. It has no authority or oversight function for the finances of the MCRPD.

The BOS notes for the record that the statement that “annual audits have not been completed in a timely manner is contradicted by evidence in the record which indicates that completion of the annual audit within a year is consistent with state law and is therefore considered timely.

- F6. MCRPD minimally supports activities in communities outside of Fort Bragg, even though significant amounts of property tax funds are collected from those communities. For example, Mendocino District contributes 35% of the Teeter funds, yet only receives 5% of the property tax funds collected in that District for its recreation and other MCRPD benefits.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F7. The Grand Jury feels that the leaseback arrangement has an appearance of impropriety. The way in which the leaseback appears to be used in this particular situation is outside of the usual leaseback arrangement. It is conveying benefits to the lessees that are not within the normal course of business. This is to the detriment of the property taxpayers of MCRPD.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F8. MCRPD’s financial problems were and are compounded by the purchase of the Hwy 20 property. MCRPD has assumed a large amount of debt with no clear means of repayment.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F9. The Grand Jury has substantial doubt about MCRPD’s ability to continue as a viable operation. The MCRPD Board and Management have used poor judgment in borrowing money from individuals and commercial banks on at least three occasions. The loan repayment terms have not been met by MCRPD.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F10. The Grand Jury finds that MCRPD has no strategic plan.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F11. MCRPD acted irresponsibly by borrowing money outside of legal parameters by borrowing more money and for a longer period of time than allowed by California Public Resources Code §5788.21.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F12. The Grand Jury finds that MCRPD has not maintained property and complete records.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F13. After originally requesting MCRPD documentation in January 2017, it was necessary for the Grand Jury to issue a subpoena in May 2017 to obtain MCRPD financial documentation.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

### **Recommendations:**

- R1. The MCRPD Board of Directors and administration immediately make all financial transactions transparent to the public. (F1, F3, F4, F5, F7, F8, F9, F10, F11, F12, F13)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R2. MCRPD develop a long-term strategic plan to eliminate all unfunded liabilities. (F1-F3, F5-F13)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R3. By a change in bylaws, each tax district has an elected representative on the MCRPD Board of Directors with the fifth member elected at large. (F2)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R4. The Board of Supervisors develop and implement a policy that addresses the advances of Teeter funding to special district in financial distress including bankruptcy. (F3, F4)

This recommendation will not be implemented because it is not warranted or is not reasonable. Government Code section 23010, which authorizes loans to special districts contains sufficient safeguards to insure that all funds will be repaid in a timely manner, regardless of the financial condition of the district which borrows the funds.

- R5. The County Auditor perform an audit of MCRPD before recommending an issuance of an advanced of Teeter funds. (F3, F4)

This recommendation was implemented prior to this report being issued in that the MCRPD is required by law to submit a copy of its annual audit to the Auditor-Controller. As noted previously, repayment of the loan authorized pursuant to Government Code section 23010, is not contingent on the financial condition of the district which borrows the funds.

- R6. The annual audits be completed on time according to MCRPD's policy. (F5)

This recommendation has been implemented. State law requires that audits be completed in a timely manner. Based on the Auditor-Controller's response to this finding the MCRPD audits have been and are submitted in a timely manner.

- R7. The property tax funds be fairly allocated to the communities based on the current tax dollars raised in each tax district. After the 5% allocation from Fort Bragg to MCRPD, remaining funds shall be fairly allocated in proportional amounts to the outlying districts. (F2, F6)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R8. MCRPD finalize the ongoing bankruptcy and divest itself on the Hwy 20 property. (F8-F11)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.