

MENDOCINO COAST RECREATION AND PARKS DISTRICT AND THEIR FIELD OF DREAMS

SUMMARY

The Mendocino County 2016-17 Grand Jury finds that the Mendocino Coast Recreation and Parks District (MCRPD) has been and continues to be financially irresponsible. MCRPD is currently and habitually delinquent on their capital lease and outstanding loans. MCRPD was over seven months late in completing the 2015-16 annual audit and is currently in Chapter 9 bankruptcy.

Because of the large debt and the absence of a long-term plan for repayment, the Grand Jury finds that these conditions raise substantial doubt about MCRPD's ability to continue as a viable entity.

The C.V. Starr Center, an aquatic and community center, was initially planned with insufficient funding for ongoing operations and capital improvements. The \$14 million project increased to a \$27 million facility over the construction period.

The City of Fort Bragg provided bailout funding to enable operations. The financial problems were unnecessarily compounded by the purchase of 580 +/- acres, a field of unrealized dreams. That property located on Highway 20 was intended to be developed as a golf course at some later date but the project failed to materialize.

In addition, MCRPD is not being fiduciarily responsible in the use of Teeter (property tax) funds. MCRPD receives Teeter funds based on four coastal school district boundaries, yet the funds are not reallocated proportionately to the outlying coastal communities.

GLOSSARY

C. V. Starr Community Center and Sigrid and Harry Spath Aquatic Facility: Starr Center

Highway 20 Property: Property purchased by Mendocino Coast Recreation and Parks District in June 2006 to be used for a golf course and recreational park.

Leaseback: An arrangement whereby the owner of an asset (usually a real estate property) agrees to sell it to another person or company on condition that the asset can be leased to its original owner at a

prearranged rent for a fixed term. Leaseback is normally undertaken to enable companies with large assets, such as real property, to realize cash from the property for use elsewhere in their business.

Teeter Plan/Funds: For the purposes of this report, Teeter funds are defined as: Property Tax money advanced for specific purposes by the County of Mendocino. In the case of MCRPD, the tax money is for the purpose of providing recreation along the coast. Money is collected from property owners in the four tax regions whose boundaries are the same as the four coastal school districts. These funds cannot be used to cure financial debt.

BACKGROUND

The Mendocino County 2016-17 Grand Jury initiated an investigation after receiving a complaint regarding the finances of MCRPD. Concerns were raised that most of the property tax collected are disproportionately distributed in the Fort Bragg region. Other regions do not receive their fair share of tax funding.

MCRPD receives funds from property taxes that are collected by the Mendocino County Tax Collector from property owners in the different coastal communities to fund recreational activities in the four coastal regions from Westport to Gualala. The District collects funds from programs, classes, events, and fund-raising activities.

Monies are comingled in the MCRPD budget. The Grand Jury could not obtain complete financial and operating records to determine which specific funds were used to pay off MCRPD debt.

APPROACH

The Grand Jury interviewed past and current members of the MCRPD Board of Directors, the Administrator of the C.V. Starr Center (Starr Center), and the City Manager of Fort Bragg. The Grand Jury requested and reviewed documents supplied by the MCRPD and the City of Fort Bragg (City). In order to receive additional documents the Grand Jury had to issue a civil subpoena to MCRPD. These were eventually received and reviewed. Newspaper articles from the Mendocino Beacon, the Fort Bragg Advocate, and The Press Democrat were reviewed along with information from the websites of MCRPD, Friends of MCRPD, and the Starr Center.

The Friends of MCRPD is an IRC 503(c)(3) non-profit corporation formed for the community's benefit. The Friends of MCRPD operations were not a subject of this investigation.

The City of Fort Bragg maintains an enterprise fund with more than a \$500,000 reserve for the benefit of the Starr Center. The enterprise operation was not a subject of this investigation.

DISCUSSION

History of the MCRPD

MCRPD was formed in 1973 with the original boundaries encompassing 20 square miles around Fort Bragg. MCRPD is a Special District existing under and pursuant to the Constitution and laws of the State of California, with an elected five-member Board of Directors which employs an Administrator. The current Administrator has been on the job for approximately one year. A series of bookkeepers have also been hired. Within the last two years, there have been three different bookkeepers and a series of District Administrators. This has hampered the ability for MCRPD to provide audit information and financial transparency. The current District Administrator has used the lack of continuity as a reason for MCRPD's inability to provide complete financial records.

MCRPD's annual audits have not been completed in a timely manner, which prevents full public financial disclosure. 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 payable. The County Auditor brings forth an annual request on behalf of MCRPD for advance property tax funds without performing any MCRPD audit review. The Board of Supervisors has automatically approved that consent-calendar item annually without any evaluation of MCRPD's underlying financial solvency.

In 1982, MCRPD was expanded to include the area served by Mendocino Unified School District (MUSD). In 1989, residents of the Point Arena area requested that MCRPD initiate proceedings to incorporate the Point Arena School District into MCRPD, and annexation of the South Coast followed. Most recently, in 2008, MCRPD annexed the remainder of the Fort Bragg Unified School District to include the village of Westport.

MCRPD owns the land on which the Mendocino Coast Botanical Gardens (Gardens) reside. A 25-year lease with the Gardens was recently negotiated at a rate of \$1.00 per year. MCRPD also owns the property on which the Mendocino Coast Humane Society is located.

MCRPD bylaws adopted March 19, 1974 by Resolution 74-2, prescribe a five-member Board of Directors elected at-large. The MCRPD Board is primarily comprised of Fort Bragg area residents. Taxpayers who reside in outlying Districts are not currently represented on the MCRPD Board of Directors.

The Grand Jury found that MCRPD was not fiducially responsible in the use of property tax (tax dollars) they receive. MCRPD receives property tax based on the four school districts areas. According to the County Auditor, MCRPD received \$465,348 in tax dollars in 2015-16 tax year. The tax dollars were received from the following areas:

- Fort Bragg Unified School District area property owners paid \$191,681 tax dollars
- Mendocino School Unified District area property owners paid \$165,058 tax dollars
- Point Arena School District area property owners paid \$86,904 tax dollars
- Manchester Elementary School District area property owners paid \$19,403 tax dollars

MCRPD's funding distribution for 2015-16 was not available, but as an example of disbursements to the above areas, the 2016-17 MCRPD funding for recreation on the coast was as follows:

- Mendocino Community Center, \$5,000
- Point Arena and Gualala, \$1,500
- City of Fort Bragg receives 45% of all property tax (tax dollars) collected to support the Starr Center

The remainder of the Teeter funds (tax dollars) are deposited into the MCRPD general fund. The General Fund is used to pay for staff at the Starr Center, maintenance, and MCRPD debt. The Teeter funds cannot be used to pay down the bankruptcy. It is unclear to the Grand Jury how all the Teeter fund money is spent. However, their indebtedness caused by the building of the Starr Center and the purchase of the 580 +/- acres off Highway 20 (Hwy 20 property) continues to be a serious concern.

C.V. Starr Community Center

In 1978, using Park Bond Act monies, MCRPD obtained a five-acre parcel known as Green Memorial Field in central Fort Bragg. After years of fundraising, and some major donations from residents, funds were raised to start the construction of a new aquatic center.

In 2002, the Starr Foundation of New York, NY, made a grant of \$4 million to the Friends of MCRPD toward construction of the new Starr Center in Fort Bragg. The grant was made in memory of Cornelius Vander Starr, who was born in Fort Bragg.

In 2003, MCRPD received a \$1million challenge grant from the Friends of MCRPD. It is reported that the MCRPD Board members donated \$500,000 toward the challenge. The construction bid was awarded in 2006; the lowest bid was \$14.1 million. The total cost of construction was \$27 million.¹

In May 2008, the Starr Foundation provided a second grant of \$13 million to fund the remainder of the pool project. This brought the total funding from the Starr Foundation to a total of \$17 million.² In August of 2009, the Starr Center, including the Sigrid and Harry Spath Aquatic Facility, opened to the public. The facility contains a 25-yard-long, eight lane lap pool and a leisure pool with beach, spray features, lazy river, and a large water slide. There is a group exercise room, spin room, cardio and fitness room, and multipurpose room. On the grounds of the Starr Center, there are Petanque courts, a skate park, two dog parks, and a picnic area.

In March 2012, MCRPD was facing financial hardship and was not able to pay their bills. MCRPD approached the City and asked them to assume responsibility of the Starr Center. The voters of Fort Bragg passed Measure A in the March 2012 special election to enact a ½ cent sales tax levied within the City limits to support the center.³ The fee schedule for Starr Center use is currently established by the City.

The City receives Teeter funds for the maintenance of the Starr Center. Fort Bragg receives all the Teeter funds collected in the Fort Bragg School District area or 45% of the total Teeter funds collected in all regions in MCRPD, whichever is greater. The City's share is remitted directly to Fort Bragg. This money is controlled by the City and is referred to as the enterprise fund.

The enterprise fund pays 70% of the District Administrator's compensation. The remaining 30% is paid by MCRPD. There is one full-time Recreational Specialist serving all communities within MCRPD paid entirely from the MCRPD budget.

¹ "Pool construction under way to make summer 09 opening," Fort Bragg Advocate News, December 24, 2008

² Ibid.

³ "MCRPD survival dependent on donations and volunteers," Fort Bragg Advocate News, January 26, 2012

The Starr Center is owned by the City and operated by MCRPD in accordance with an operating agreement between the two entities. The Starr Center Administrator is responsible for day-to-day operations. The Administrator reports directly to the MCRPD Board of Directors. The MCRPD Board of Directors is responsible for key policy decisions. The Fort Bragg City Council adopts the annual operating budget for the Starr Center and establishes the fee schedule. Together with MCRPD, the City is responsible for ensuring that the Starr Center operates in a fiscally responsible and sustainable manner.⁴

Highway 20 Property History

MCRPD desired to purchase property to build a golf course and recreational park. MCRPD identified 580 +/- acres on Highway 20 as a potential location.

In December 1999, Georgia Pacific, owners of the property, transferred the property to Hawthorne Timber Company for \$610,900.

In April 2006, prior to the transfer of the property to The Friends of MCRPD, a property appraisal was requested by the Savings Bank of Mendocino County. The appraised value was \$3,440,000. In June 2006, Hawthorne Timber Company transferred the property to The Friends of MCRPD for an undisclosed amount.

While the property was owned by the Friends of MCRPD, MCRPD began development and plans for the golf course. Before obtaining title to the property, MCRPD estimated they had already spent \$1,294,828 on the proposed golf course. This included a questionable payment of \$325,000 for “volunteer” services by the project manager.

In 2006, MCRPD acquired a loan from the Savings Bank of Mendocino County in the amount of \$2,221,000 to pay for the property and to pay for an earlier line of credit provided by the same bank.

The balance of \$1,356,000 from the 2006 loan was used for the following purposes:

- repayment of the Savings Bank of Mendocino County line of credit used from 1997 to 2006 for the proposed golf course related expenses
- repayment to private investors in the proposed golf course project
- retained funds to make mortgage payments to the Savings Bank of

⁴ CV Starr Center Website, History of CV Starr Center

Mendocino County while assembling a deal with a potential golf course developer

In July 2007, the Savings Bank of Mendocino County approached the City to express their concern about MCRPD's ability to repay the loan. MCRPD wanted to see if the City was interested in purchasing the property, as evidenced by the following:⁵

- The City engaged in conversations with MCRPD and by September 2007 the City concluded that the property did not have sufficient water resources. Water resources would be significantly diminished if the proposed golf course project proceeded.
- In the fall of 2007, MCRPD proceeded with Request for Proposal soliciting a golf course developer.

In April 2008, the Friends of MCRPD deeded the Hwy 20 property to MCRPD. MCRPD entered a lease back arrangement, assigning the leasehold interest in the Hwy 20 property to the Municipal Finance Corporation⁶ for \$2.3 million. These funds were used to pay off the Savings Bank of Mendocino County's mortgage on the Hwy 20 property. MCRPD agreed to repay \$2.3 million over 20 years at 4.95% interest at \$91,238 twice a year to the Municipal Finance Corporation.⁷

California Public Resources Code §5788.21 states that a district may acquire necessary real property by borrowing money on contract. This section of the code specifies that the amount of indebtedness shall not exceed an amount equal to two times the actual income from property tax revenues received. The property tax collected for fiscal year 2005-06 was approximately \$500,000. In accordance with the above code section, the amount of indebtedness should not have exceeded \$1 million, for a term not to exceed 10 years. MCRPD's \$2.3 million indebtedness over a period of 20 years is in conflict with California Public Resources Code §5788.21.

In April 2008, the Municipal Finance Corporation assigned the Lease and Sublease/Option Agreement to WestAmerica Bank.

In November 2009, MCRPD defaulted on a \$91,238 payment to WestAmerica Bank. In January 2010, WestAmerica Bank issued a notice of default and filed suit against MCRPD.

⁵ Fort Bragg Advocate Article entitled "OHV use of Regional Park under consideration: dated 1-26-12

⁶ Municipal Finance Corporation (MFC), is a California corporation, specializing in the structuring, documentation, funding and administration of tax-exempt financings for public agencies and non-profit institutions. MFC has arranged project financings public agencies including cities, counties, school districts, special districts, higher education and health care agencies.

⁷ Certified Memorandum from Douglas Provencher from Provencher and Flatt, LLP dated 6-06-2012

In March 2010, MCRPD accepted a \$200,000 private loan. These funds were used to make the following payments to WestAmerica Bank:

- The overdue November 7, 2009 payment of \$91,238
- The May 7, 2010 payment of \$91,238
- An additional payment of \$28,000 to cover legal expenses incurred as a result of the lawsuit filed by WestAmerica Bank

The \$200,000 private loan was due and payable in March 2012. As of February 2017, \$70,000 in principle and \$8,664 in interest have been paid on this loan. This debt continues to grow at a rate of 10% interest on the unpaid principal per annum. Additionally, if the payment is not received by the 10th day of the month in which it is due, a 5% late charge is incurred. At the time of this report, this loan had not been paid in full.

In May 2010, MCRPD made a fourth payment to WestAmerica Bank as part of the settlement of the lawsuit. The total leaseback payments between November 7, 2008 and May 7, 2010, amounted to approximately \$365,000.

In October 2010, as part of the settlement of the lawsuit, MCRPD negotiated an amendment to the Sublease/Option Agreement. The payment schedule was modified to eliminate the November 7, 2010 payment of \$91,238, and to have the May 7, 2011 payment of \$91,238 apply only to interest. The agreement added a 41st balloon payment of \$216,889 due November 7, 2028. In February 2011, MCRPD requested that the Century 21 Real Estate Agency market the Hwy 20 property for \$2.9 million.

In February 2011, MCRPD contacted the City to see if they were interested in purchasing the property. In November 2013, the City entered into a joint escrow agreement with MCRPD to purchase the Hwy 20 property. In January 2014, the City received the appraisal on the Hwy 20 property. The current appraised market value was \$875,000. The City was unable to purchase the property because they are prohibited from purchasing property that exceeds the Fair Market Value.

In September 2015, the City reconsidered purchasing the Hwy 20 property due to the water wells located on the property. The feasibility analysis of ground water was five to 10 feet lower than in the

2001 and 2004 analyses when the wells were previously measured. This led the City to once again to decline the offer.

Financial Problems and Bankruptcy

MCRPD has faced significant cash flow issues since the Starr Center opened in 2009. MCRPD considered closing both of its recreation centers in Mendocino and Fort Bragg. MCRPD attempted to raise \$300,000 from public donations to assist in paying their bills.⁸

In February 2011, MCRPD funds reached a zero balance.⁹

For at least the past four years, MCRPD has requested and received advances on Teeter funds from the County because they did not have the finances to pay operating expenses and service the debts. The advances on Teeter funds may only to be used for operating expenses. The Grand Jury could not determine if the funds were comingled.

MCRPD needs approximately \$2 million annually to operate. Their annual income of approximately \$1.5 million creates a \$500,000 annual structural deficit.¹⁰

In May of 2011, MCRPD had a deficit of \$117,000. They also projected a \$182,000 deficit in 2012.¹¹ In July 2011, MCRPD borrowed a short-term loan of \$54,000 from the Savings Bank of Mendocino County to make payroll. This loan was paid back in August 2011.

In July 2011, MCRPD closed the Starr Center on Sundays due to the lack of funds to pay the staff. MCRPD's debt had increased, and they needed \$700,000 to operate the Starr Center, to make payments on the Hwy 20 property, and to repay a \$200,000 loan. MCRPD raised \$275,748 in donations.¹²

⁸ "Rec Centers Closure Delayed," Fort Bragg Advocate News, December 23, 2010

⁹ "MCRPD Reaches Zero Balance," Fort Bragg Advocate News, March 3, 2011

¹⁰ "MCRPD Faced a \$500K Deficit," Fort Bragg Advocate News, July 11, 2011

¹¹ "Rec District still Battling Budget Woes," Fort Bragg Advocate News, May 26, 2011

¹² "MCRPD to Close CV. Starr on Sundays," Fort Bragg Advocate News, July 28, 2011

In August 2011 at a public meeting, a private citizen called for the MCRPD Board to file bankruptcy, telling the Board that the District will never raise adequate funds given the uncertainty of the organization.¹³

On December 29, 2011, MCRPD filed with the bankruptcy court for the HWY 20 property loan.

WestAmerica Bank refused MCRPD's offer on the property pay-off made about 9 months after filing bankruptcy documents.

In February 2014, the bank filed an appeal with the 9th Circuit District Court. The appeal remains with the 9th Circuit District Court. The Court has upheld MCRPD's right to file bankruptcy; however, MCRPD does not have the money to defend themselves against WestAmerica Bank's claims.

As of May 2017, the \$200,000 private loan has not been paid in full. MCRPD has paid \$75,000 in principal and \$8,664 in interest on the loan which was due in 2012.

Given all of the myriad problems affecting MCRPD, the Grand Jury is dismayed that there is no evidence of a strategic plan.¹⁴

FINDINGS

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.

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

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

¹³ "Public seeks bankruptcy for MCRPD," Fort Bragg Advocate News, August 25, 2011

¹⁴ Strategic planning is an organizational management activity that is used to set priorities, focus energy and resources, strengthen operations, ensure that employees and other stakeholders are working toward common goals, establish agreement around intended outcomes/results, and assess and adjust the organization's direction in response to a changing environment. It is a disciplined effort that produces fundamental decisions and actions that shape and guide what an organization is, who it serves, what it does, and why it does it, with a focus on the future. Effective strategic planning articulates not only where an organization is going and the actions needed to make progress, but also how it will know if it is successful.

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.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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 judgement in borrowing money from individuals and commercial banks on at least three occasions. The loan repayment terms have not been met by MCRPD.
- F10. The Grand Jury finds that MCRPD has no strategic plan.

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.

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

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.

RECOMMENDATIONS

The Grand Jury recommends that:

- 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)
- R2. MCRPD develop a long-term strategic plan to eliminate all unfunded liabilities. (F1-F3, F5-F13)
- 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)
- R4. The Board of Supervisors develop and implement a policy that addresses the advances of Teeter funding to special districts in financial distress including bankruptcy. (F3, F4)
- R5. The County Auditor perform an audit of MCRPD before recommending an issuance of an advance of Teeter funds. (F3, F4)
- R6. The annual audits be completed on time according to MCRPD's policy. (F5)
- 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)
- R8. MCRPD finalize the ongoing bankruptcy and divest itself of the Hwy 20 property. (F8-F11)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individuals:

- Mendocino County District Attorney (F1, F11, F12) and (R1)
- Mendocino County Auditor (F3-F5) and (R4-R6)
- MCRPD District Administrator (F1-F3, F5-F13) and (R1-R3, R6-R8)
- City of Fort Bragg City Manager (F1, F3, F5-F12) and (R1, R2, R6-R8)

Pursuant to Penal Code §933.05, responses are *required* from the following governing bodies:

- Mendocino County Board of Supervisors (All Findings and All Recommendations)
- MCRPD Board of Directors (All Findings and All Recommendations)

Pursuant to Penal Code §933.05, responses are *requested* from the following individuals:

- State Auditor/Controller (All Findings and All Recommendations)

APPENDIX

- 5-1 MCRPD Funding and Spending Pie Chart
- District Map

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §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.

Appendix 5-1

MCRPD FUNDING and SPENDING



