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**OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF MENDOCINO**

October 6, 2017¹

**DISTRICT ATTORNEY'S RESPONSE TO THE MENDOCINO COUNTY GRAND JURY
RE: *MENDOCINO COAST RECREATION AND PARKS DISTRICT AND
THEIR FIELD OF DREAMS* REPORT, DATED JUNE 27, 2017**

Mendocino County's elected District Attorney, David Eyster, respectfully submits the following response to the 2016-2017 Mendocino County Grand Jury report entitled, *Mendocino Coast Recreation and Parks District and Their Field of Dreams*, dated June 27, 2017.

As required by law, the response has been prepared by the District Attorney and his staff. Taken as a whole, **this Grand Jury report, while conclusory versus fact-driven, provides interesting information.** It is a report that was written with the apparent intent to focus the spotlight on a problem and sound an alarm for the voters living in the special district in question so those voters may pay closer attention to this particular district's business dealings.

With the Grand Jury requesting that the District Attorney comment on Grand Jury Findings #1, 11, and 12, as well as Grand Jury Recommendation #1, the following is respectfully submitted:

Grand Jury Finding #1: "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."

District Attorney's Response to Grand Jury Finding #1: Since we all can appreciate that different words have different meanings, it is important to understand the legal meaning of the Grand Jury's use of the word "misfeasance," as it was used in the context of "evidence of continuing misfeasance." According to Black's Law Dictionary and common legal usage, misfeasance means, "The improper performance of some act which a person may lawfully do."² Accordingly, by definition and usage, the Grand Jury finding calls attention to its conclusion that the MCRPD, while acting within its lawful authority, may be performing in an unsatisfactory manner.

¹ The release of the District Attorney's response was originally planned to occur on Monday, October 9, 2017. However, due to the fire tragedy that had just begun last week, the decision was made to delay release for one work week.

² The use of the word misfeasance may be compared to and contrasted against a more serious descriptor -- "malfeasance" -- which, as defined by Black's Law Dictionary, is "A wrongful act which the perpetrator has no legal right to do."

Given that the report is, as previously noted, conclusory in nature, this particular Grand Jury report provides the District Attorney no substantive evidence that allows the DA, as prosecuting authority, to agree or disagree with such a finding. In that regard, it will be noted that the Grand Jury did not seek assistance from the DA and/or his investigative unit during its 2016-2017 term to ferret out and/or document admissible evidence that might be available and possibly used to initiate and pursue criminal proceedings. Finally, the report does not call out or seem to indicate that any individual Board member has engaged in criminal misconduct.

Grand Jury Finding #11: "MCRPD acted irresponsibility [sic: "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."

District Attorney's Response to Grand Jury Finding #11: The code section cited does not set forth and authorize criminal sanctions – the District Attorney's area of expertise and primary responsibility -- as a means to address allegations of irresponsible behavior by an elected Board that might be proven beyond a reasonable doubt. While there are circumstances where a Director may incur civil liability for misconduct occurring while serving on a Board of a Special District, generally a Director will not be personally liable for a mistake of judgment, negligent or otherwise, except in the case of his or her own willful misconduct and bad faith.

Grand Jury Finding #12: The Grand Jury finds that MCRPD has not maintained proper and complete records.

District Attorney's Response to Grand Jury Finding #12: Failing to maintain proper and complete records may be a finding of special interest to the voters within the Special District. As far as the prosecuting authority goes, failure to keep proper and complete records as required by the law or even by proper business practices may be an indicator of a greater problem within an organization.

Grand Jury Recommendation #1: "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)"

District Attorney's Response to Grand Jury Recommendation #1: Given the information provided, this recommendation seems to be nothing more than sound business advice.

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Concluding, this Board, and its administration, work for the voters who reside within the boundaries of the district. For those voters, there continues to be local remedies that may address unpopular decisions and/or results of the Park and Recreation District's Administrator and/or Board. For instance, residents have the opportunity to access the public participation process at meetings and propose changes. Bad behavior or decisions, if any, can also be addressed through elections. Corrections and/or changes through elective changes in the Board can be done piecemeal as to individual Directors when his or her terms expire, or done through recall action. Again, local elections provide the opportunity to change the character and policies of the governing board, which, in turn, have the potential to correct the course of a wayward ship, if that be the situation. Residents also have the ability to approach their LAFCO about changing the structure of their special district, when and if necessary and appropriate.

C. David Eyster

Mendocino County District Attorney

cc: Mendocino Co. 2016-2017 Grand Jury and Presiding Judge, Mendocino Co. Superior Court