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September 10, 2024

Honorable Mark A. Talamantes
Presiding Judge
Marin County Superior Court
3501 Civic Center Drive
San Rafael, CA 94903

Dear Judge Talamantes,

The Marin County Board of Supervisors' response to the FY 2022-2023 Civil Grand Jury Report "*Spending Public Money to Preserve Marin's Agricultural Heritage: Is anyone Watching?*" (June 10, 2024) is attached. The attached document responds to all the requests made for responses from the Board of Supervisors.

Respectfully submitted,

Dennis Rodoni
President, Board of Supervisors
CC: Marin County Civil Grand Jury

#7

COUNTY OF MARIN

RESPONSE TO GRAND JURY REPORT FINDINGS AND RECOMMENDATIONS

REPORT TITLE: **"Spending Public Money to Preserve Marin's Agricultural Heritage: Is anyone Watching?"**

REPORT DATE: **June 10, 2024**

RESPONSE BY: **County of Marin Board of Supervisors**

GRAND JURY FINDINGS

- We disagree wholly or partially with the findings numbered: **F1, F3 – F8**
- We agree with findings numbered: **F2**

GRAND JURY RECOMMENDATIONS

- Recommendation numbered **R6** has not yet been implemented and will be implemented in the future.
- Recommendations numbered **R1 – R5** will not be implemented because they are not warranted or reasonable.

Date: September 10, 2024

Signed: [signature]

Dennis Rodoni,
President, Board of Supervisors

#7

RESPONSE TO GRAND JURY FINDINGS

F1. Due to a lack of transparency concerning the details of the disbursement of Measure A funds, there is a public perception that there may be conflicts of interest in the way that the funds are being allocated.

Disagree

We have no evidence to indicate 'that there may be conflicts of interest in the way that Measure A funds are being allocated.' All Measure A funds have been spent according to the voter approved Measure A Expenditure Plan, and all organizations receiving Measure A funds have missions that align with the specific category of Measure A funding they receive.

F2. The County of Marin has a stated and long-held interest in assuring that viable agricultural business activities exist, and continue to exist, on properties which are subject to Agricultural Conservation Easements obtained using Measure A funds.

Agree

We agree that the County has an interest in assuring that agriculture businesses in Marin are economically viable and to promote the continued viability of agricultural lands within the county.

F3. The Measure A Community Oversight Committee, established as part of the Measure A ballot initiative, is limited in its ability to conduct a thorough oversight of Measure A recipients.

Disagree

The Measure A Oversight Committee's role is to review expenditures of Measure A funds on an annual basis to ensure they conform with the Measure A Expenditure Plan. As described in the committee bylaws, the oversight committee does this by:

1. Reviewing annual expenditures to ensure they conform with the Expenditure Plan;
2. Overseeing an annual audit; and
3. Preparing an annual report describing how funds were spent.

We have no evidence to suggest that the Measure A Oversight Committee is limited in its ability to conduct these duties.

F4. The County of Marin currently does not independently verify the accuracy of appraisals submitted with Farmland Preservation Program grant applications, the continued viability of the property as an agricultural operation, nor the identities of all parties participating in the funding decisions for these grants.

Disagree

As stated in the Farmland Preservation Grant Program guidelines and grant application package, "*all real estate related documents, including, but not limited to appraisal, purchase agreement, and escrow instructions*" must be formally reviewed by the Department of Parks and

Open Space and the County Department of Public Works Real Estate Division. These staff members have the training, experience, and expertise to perform the formal review of real estate items for the grant program.

The program guidelines also clarify that easements must include a provision requiring continued productive agricultural uses on the property. In addition, the FPP Grant Agreement requires that the holder of an easement funded through Measure A conduct annual easement monitoring, and that a monitoring report be submitted to the County. As such, the County receives an annual report from the easement holder for every Farmland Preservation Grant funded easement, summarizing the findings of monitoring. To date, the terms for every grant funded easement have been upheld.

F5. Individuals from a small group of West Marin farming families that are often beneficiaries of Measure A funds are consistently among the members of the Marin Resource Conservation District Board of Directors, creating a public perception of conflicts of interest in the disbursement of public funds.

Disagree

We cannot agree with this finding as the Grand Jury's report does not reflect any evidentiary basis for its conclusion regarding "public perception." Moreover, California law specifically authorizes a resource conservation district to grant funds for resource conservation purposes to landowners who are also members of the board of directors of the resource conservation district. *See* Public Resource Code Section 9412; *Bordelon* FPPC Advice Letter (1977) A-77-298.)

F7. The difficulty in filling vacancies on the Measure A Community Oversight Committee is caused, at least in part, by the absence of any meaningful outreach to the public when such vacancies arise.

Disagree

As is the case with all other County Boards and Commissions, Measure A Oversight Committee vacancies are managed through the Office of the County Executive, Clerk of the Board division. The process for filling vacancies includes outreach efforts such as announcements on the County website, press releases, outreach by Board Members, and consideration of voluntary expressions of interest from the public.

In addition, the County has launched a comprehensive Boards and Commissions Equity Project aimed at making the recruitment process more equitable and transparent. This project will further enhance outreach and even further help to ensure all segments of the community are aware of and have the opportunity to participate in commissions.

The Measure A Oversight Committee, in particular, has consistently received candidates from a range of backgrounds aligning with the Committee bylaws, which include a "*working knowledge in subject areas and disciplines beneficial to the work of the committee, such as financial management and reporting, public agency administration, agriculture and the provision of public park and open space services*." This alignment demonstrates that the outreach efforts are effective in drawing qualified and relevant candidates.

F8. Public confidence in the disbursement of Measure A funds is undermined by the failure of the Marin County Department of Finance to conduct annual audits of all recipients of Farmland Preservation Program funds.

Disagree

We cannot agree with this finding, as we have no evidence to support what the finding broadly concludes regarding any perceived lack of public confidence in how Measure A funds are dispersed. The Department of Finance Audit Division performs annual reviews of Measure A. Auditors ensure expenditures comply with voter approved language and the Measure A grant guidelines approved by the Board of Supervisors. Measure A funding is generally audited by two separate auditors annually, and there have been no adverse findings in the more than ten years that Measure A has been active.

RESPONSE TO GRAND JURY RECOMMENDATIONS

The Marin County Civil Grand Jury recommends that by December 31, 2024:

R1. The Board of Supervisors should require that all future grant applications for $25,000 or more of Measure A funds include the following:

- **a) copies of all minutes, recordings and other documents of the grant application process which relate in any way to the selection of the property that is the subject of the grant application;**
- **b) the identities of all parties who participated in the discussions, or decision making in the process leading to the grant application;**
- **c) a specific and detailed report on the property's agricultural economic viability, including but not limited to, the Initial Agriculture Management Plan specified in the deed of the Agricultural Conservation Easement between the easement holder and landowner;**
- **d) a mandate that an annual report be submitted to Marin County Parks and the Measure A Community Oversight Committee outlining the property's continued agricultural economic viability, including at a minimum, copies of all easement monitoring and reporting plans submitted to the easement holder and any revision made to a copy of the initial agricultural management plan; and**
- **e) a disclosure of any family relationship between the property owner and the grant applicant's governing body, any member of the Board of Directors of Marin Resource Conservation District or any member of the Measure A Community Oversight Committee.**

This recommendation will not be implemented because it is not warranted or reasonable.

This recommendation cannot be implemented because it would appear, in part as written by the Grand Jury, to include Measure A programs that provide funding to municipalities, community groups, and nonprofits within the county. These grantees use funds to create access to park lands and to acquire open space for public or conservation uses. These uses of Measure A expenditures are unrelated to agriculture production or real property.

Regarding items R1-a and R1-b, the County does not have access to the meeting minutes, rosters of meeting attendees, or other internal records kept by private nonprofit entities. It would be atypical for a government agency to request these items. Individual applicants for Measure A funding are best suited to opine on their respective project selection processes.

Regarding item R1-c, all Measure A grant applications are evaluated on the merits of the proposed project, the project's ability to achieve the goals of the grant program, and the project's adherence to the requirements of the grant. The Farmland Preservation Grant Program currently requires that easements purchased with grant funds contain a provision requiring continued productive agricultural uses on the easement property. This is not the same as assuring that the property in question is "economically viable". Preservation of existing farmland, rather than economic impact, is the primary factor in evaluation. Additionally, any property potentially subject to an easement grant is visited in-person by County staff to evaluate agricultural production. The FPP grant currently requires that each easement include an Agricultural Management Plan.

Regarding item R1-d, Measure A grant recipients are currently required to submit annual reports to County staff, summarizing monitoring of the subject easement property in the prior year. This monitoring ensures the terms of the easement, including the continuation of commercially productive agriculture, have been upheld.

Regarding Item R1-e, staff will include a section in the Farm Preservation Program application checklist that addresses conflict of interest in the next revision of the Measure A grant application.

R2. The Board of Supervisors should authorize, and require that the Measure A Community Oversight Committee undertake the following for all future Farmland Preservation Program grant applications and grants:

- **a) review all grant applications for conflicts of interest;**
- **b) review all grant applications to ensure the economic viability of the proposed management plan;**
- **c) review all grant applications to confirm the accuracy of the appraised value of the easement being granted;**
- **d) require the grant applicant, as part of its required annual report, to include a review and analysis of the plans to keep the property in productive agricultural use and to deliver to the Measure A Oversight Committee a complete copy of that report within 30 days of its completion.**

This recommendation will not be implemented because it is not warranted or reasonable.

Reviewing grant proposals prior to Board of Supervisors' consideration falls outside of the scope of the Measure A Oversight Committee as expressed by its bylaws. The Measure A Community Oversight Committee reviews annual expenditures of Measure A funds and oversees an annual audit where the Committee can review compliance with Measure A Program requirements.

Regarding item R2-a, as stated in the response to item R1-e above, future grant cycles will include content addressing conflict of interest in the application materials.

Regarding item R2-b, as stated in the response to items R1-c above, "economic viability" is not part of the criteria for Farmland Preservation Measure A grants.

Items R2-c and R2-d of this recommendation fall outside the scope of work defined by the Measure A Oversight Committee bylaws. As stated above, the Measure A Oversight Committee does not review grant applications prior to Board approval. However, application review and review of continued agricultural productivity for FPP grant applications are conducted by County staff. Measure A grant programs dealing with real property require that all real estate related documents, including appraisals, be reviewed and approved by the County of Marin's Department of Public Works Real Estate Division prior to award of grant funds. Subsequent annual reporting required from grantees ensures that properties selected for Farmland Preservation Grants remain in productive agricultural use.

R3. The Board of Supervisors should require the Measure A Community Oversight Committee to report its findings regarding any grant application to the Board of Supervisors prior to the Board of Supervisors' decision on funding said application.

This recommendation will not be implemented because it is not warranted or reasonable.

Reviewing grant proposals prior to Board of Supervisors' consideration falls outside of the scope of the Measure A Oversight Committee <u>as expressed by its bylaws</u>. According to Article III of these bylaws, "*The purpose of the Committee is to review, on an annual basis, the expenditure of tax revenue generated by Marin County (Measure A)...for parks, open space, and farmlands preservation.*" The oversight committee does this by reviewing annual expenditures to ensure they conform with the Expenditure Plan, overseeing an annual audit, and preparing an annual report to the Board of Supervisors describing how funds were spent. The Measure A Oversight Committee does not review applications prior to Board approval, per committee bylaws. Initial review of grant applications is completed by County staff, who then make recommendations for consideration by the Board of Supervisors agenda during open session.

R4. The Board of Supervisors should deny any grant application where Farmland Preservation Program funds will be awarded to any person, or their family, who is serving as a member of the board of directors of the Marin Resource Conservation District or MALT, or a member of the Measure A Community Oversight Committee:

This recommendation will not be implemented because it is not warranted or reasonable.

It is important to note that Farmland Preservation Program grants are not awarded to individuals or families. Grants are made solely to qualifying nonprofit organizations, for the express purpose of purchasing easements that protect working agricultural lands. As noted in the responses to R1 and R2 above, Parks Staff will add an item addressing conflict of interest to the grant application checklist in the next Measure A grant cycle. MALT, the sole applicant to date for Farmland Preservation Grant funds, has adopted conflict-of-interest policies consistent with best practices, last updated in 2019.

A prohibition on Marin Resource Conservation District members owning land subject to a Measure A easement is inconsistent with California law (see response to F5 above). A prohibition against any Board Member of MALT or a member of the Measure A Oversight Committee from receiving Measure A grant-funded easements is infeasible. Governance of

Agricultural Land Trusts should be representative of the communities they serve. Most, if not all, agricultural land trusts in California include farmers and ranchers on their boards. It would be unreasonable to expect farmers on the board of an agricultural land trust would not place agricultural or resource conservation easements on their own properties. It would be arguably ineffective to assemble a credible land trust board in West Marin without members who have some degree connection to agricultural production in the region.

We agree with the Grand Jury that it is in the public interest that organizations making use of public funds have conflict-of-interest policies and procedures. We further agree with the Grand Jury that it is prudent for Measure A program administrators to require attestation that measures to mitigate conflicts of interest are in place. As stated in the response to R2 above, staff will include a section in the grant application checklist that addresses conflict of interest in the next Measure A grant cycle.

R5. The Board of Supervisors should develop and implement an expanded outreach program aimed at increasing public awareness of the existence of openings on the Measure A Community Oversight Committee, and how to apply for these openings.

This recommendation will not be implemented because it is not warranted or reasonable.

As one of numerous committees charged with advisory and oversight roles in the County of Marin, Measure A Oversight Committee recruitment and outreach activities are administered by the Office of the County Executive's Clerk of the Board division. The County continuously seeks to increase diversity and representation in all Boards and Commissions, including the Measure A Oversight Committee.

In this regard, the County has initiated a Boards and Commissions Equity Project that is currently in process. This project aims to further enhance the inclusiveness and transparency of recruitment efforts. However, there is no evidence to suggest that the existing notice and outreach practices have resulted in a lack of qualified candidates for the Measure A Oversight Board, any more so than among other board and commissions.

R6. The Board of Supervisors should require the Department of Finance to conduct an annual audit of all recipients of $100,000 or more of Farmland Preservation Program funds.

This recommendation has not been implemented and will be in the future.

This recommendation will be implemented beginning with the next audit cycle. The Department of Parks and Open Space will request that the Department of Finance audit recipients of the Farmland Preservation Grant Program annually. This will formalize the audits that have been occurring most years as part of the County's and the Marin Open Space District's normal audit processes.