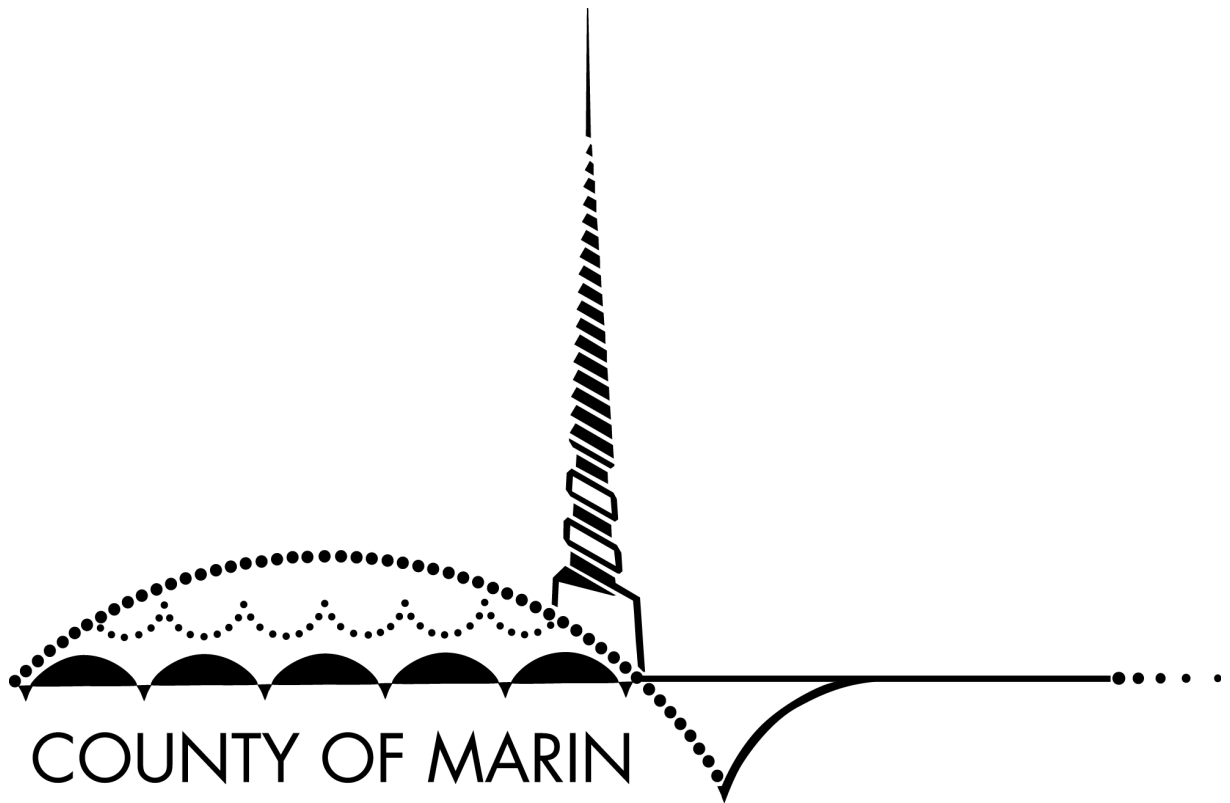
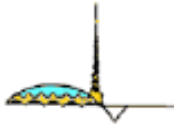

2012/2013 MARIN COUNTY CIVIL GRAND JURY

College of Marin Foundation What's Now? What's Next? -Revised

Report Date – June 11, 2013
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Disclaimer: This report is not to imply or infer any legal wrongdoing by College of Marin Foundation or College of Marin. It has been our intention to examine fully the financial status of the Foundation and provide that information to the residents of Marin County. To the best of our knowledge this information is correct as of May 14th, 2013.

COLLEGE OF MARIN FOUNDATION What's Now? What's Next? - Revised



SUMMARY

College of Marin Foundation (the Foundation), incorporated in 1964, has been throughout its existence, the primary fundraising instrument of College of Marin (the College). As an independent nonprofit tax-exempt organization, the Foundation has provided support to many of the six to eight thousand students who enroll at the College each year and to a substantial number of College programs.

Since 2011, concern about the management of money donated to the Foundation has been the subject of considerable media attention. Dramatic changes in the Foundation Board's membership¹ and questions regarding disbursement of the funds under Foundation control have led to speculation and concern regarding how certain donations have been managed. Those concerns were heightened when it was revealed in mid-2012 that since late 2011, \$464,464 in Restricted funds designated by donors to be used for specific student needs and College programs, had been used to pay legal, accounting and other similar expenses.²

¹ Crowe Horwath final report, March 28, 2013, page 2, Observation and Recommendation (Appendix H)¹ The Foundation's Board, as many nonprofit organization boards, has no specific qualifications or requirements for membership. Existing board members may nominate whomever they wish as a new member. A vote of board members determines whether the proposed member is accepted or rejected.

² Crowe Horwath final report, March 28, 2013, page 2, Observation and Recommendation (Appendix H).

With those funds depleted and no money to cover operating costs, the Foundation, while intact (at least on paper), is better termed “dormant” than operational and appears to be headed for dissolution. Its remaining assets are frozen, the interim Board of Directors consists of two persons--not the nine to eleven required by the corporation’s By-Laws³--and questions have been raised regarding not only the Foundation’s status, but also the future of fundraising for the College’s students and programs.

A lack of transparency regarding Foundation financial matters contributed to its present state of disarray, and while the current Board’s attempts to rectify the situation have been substantial, there are still issues that require explication.

Using the two most recent reviews of the Foundation’s finances and other source materials as the basis for our report, we provide a review of the past and current state of Foundation assets and explore issues facing the College, the Foundation and donors.

Given the information the Grand Jury has obtained and in light of recent events, we recommend that the Foundation or its successor organization, make public its financial status and plans for the future on a quarterly basis. We recommend that the principals of the Foundation and the College’s Advancement Office (the current repository for donations) immediately file for tax-exempt status with the State of California and the Internal Revenue Service (IRS), the latter under US Code 501(c)(3). Additionally, the Grand Jury discovered that the Foundation’s filings as a charitable trust with the State and the IRS are overdue. These documents must be in place, whether or not the Foundation is dissolved. If dissolution proceeds, we recommend that an independent body be created or engaged to collect and administer donations to prevent any potential conflict of interest. Finally, because emergency funds for students in immediate need of financial assistance were part of the \$464,464 of Foundation funds used for other purposes, outside sources should be sought to meet student needs until a permanent program to supply these funds is in place.

BACKGROUND

History of the Foundation

The College of Marin Foundation, chartered and incorporated on June 9, 1964, was formed by a group of private citizens who wished to identify and address the financial needs of students and programs beyond the ability or purview of the College to supply. The Foundation was granted non-profit status under federal and state statutes⁴ with a twofold function: first, to develop and “mine” donation sources and second, to appropriately disburse those funds in accordance with law and donor wishes. A portion of donations was used for operating costs and annual administrative fees for managing the Endowment and Restricted funds. Some donations have been from individuals or groups, while others are the result of matching corporate gifts, bequests, trusts, and the like. College departments could create separate accounts to which faculty, staff and

³ College of Marin Foundation By-Laws, 2009, Article 7, Sections 1 and 2. (See Appendix D)

⁴ IRS USC Section 501(c)(3); State of California Revenue and Tax Code Section 23701e.

others might donate to support those specific departments and department programs. In all, more than 250 accounts formed the bulk of the Foundation's assets.

In the past, the Foundation has used these donations to defray costs associated with enrollment at the College for students in need of financial assistance, to support the arts, nursing and disabled students programs, and a host of other projects, and to act as the vehicle for endowments. By providing scholarships, book and other grants, student aid funds, emergency loans and the like, the almost half-century-old organization has been a boon to the College and its students.⁵

Designated Repositories for Donations

In 1992, the Foundation entered into its most recent memorandum of understanding with the College, officially agreeing to act as its fundraising agent. The Foundation had acted in that capacity with formal arrangements since 1982. However, beginning in the late 1990s and perhaps as late as the first part of this century, donations made to the College were routinely transferred to the Foundation to manage. As with other similar educational charitable organizations, donors could choose where their contributions were to be placed from among three options: unrestricted funds, restricted funds, and endowments.

Unrestricted funds, also referred to as “temporarily restricted funds,” are those either designated by donors for administrative costs or funds donated without specific intent. A foundation's board may disburse these funds, at their discretion, to where the need is greatest, utilizing best practices under the state and federal statutes governing non-profit organizations. Foremost among those practices, is disbursement of funds according to established methods of internal control over a charity's fiscal management, both to safeguard assets and ensure the reliability of financial records.

Restricted funds are those to be used for specific purposes determined by the donor. Usually these are funds contributed for a particular program (nursing, disabled students, etc.) or department within the College, although donors may specify other uses as well.

Endowments - or alternatively, permanently restricted funds - comprise the third category. These funds are fully invested by the charitable organization with the explicit intent that the interest derived from their investment over time is used to support a particular group or program on a continuing basis, while the principal of the invested funds remains intact. The goal is to preserve the initial investment while providing a steady stream of funds to the programs they support.⁶

⁵ College of Marin Foundation website, [www.marin.edu/backup/events/files/comf overviewA.pdf](http://www.marin.edu/backup/events/files/comf%20overviewA.pdf)

⁶ Financial Accounting Standards Board (FASB) Staff Position Paper FAS 117-1, August 6, 2008: Endowments of Not-for-Profit Organizations: Net Asset Classification of Funds Subject to and Enacted

How the Foundation was handling all three classes of funds became a topic of interest to the media in the first few months of 2012, as problems began to surface publicly. A focusing event was the May release to the media of a letter from a student member of College of Marin's Board of Trustees. Referenced in the letter and attached to it as an exhibit, were Foundation minutes for a March 23, 2012 meeting that include the following phrase, "*COMF has had to liquidate \$500,000 to cover interfund (sic) transfers,*" and the added remark, "*The problem is the investment fund generates \$150-\$160K which is not enough to cover administrative costs.*"⁷ (See Appendix A) The obvious imbalance focused intense attention on the Foundation in local media.

Indicators of Internal Foundation Problems

The release of the Board's minutes and the implications of their contents brought even more media attention to what appears to have been a period of substantial change and disharmony within the Foundation. External indications of internal Foundation strife first appeared at the end of 2011, when the long-time Executive Director member resigned with no public explanation.

A new Executive Director took office February 24, 2012--a day after his predecessor's severance agreement was effectuated. Two months later, the Board terminated his employment for reasons that remain publicly indeterminate. A lawsuit filed on his behalf in San Francisco Federal District Court, sought \$777,000 from the Foundation for wrongful termination and other claims. It was settled for an undisclosed amount, of which the Foundation bore \$5,000 and Foundation insurance the balance. Following his termination in April 2012, the Board engaged a management firm to perform the functions of the Executive Director.

In addition to a succession of salaried Executive Directors, between July 2011 and June 2012, a total of six Board members resigned for a variety of unreported reasons and were replaced. Board members are not financially compensated for their work.

The Foundation Board's membership remained in a state of flux until September 17, 2012 when the nine regular members of the Foundation Board resigned en masse. According to the Crowe Horwath audit and Grand Jury interviews with current and former Board members, the resignations were based upon disputes between those Board members who left and the Board's *ex-officio* members, who indicated in an interview, that they had been excluded from Board decision-making since March 2012. The Foundation's 1965 Charter specifies that the Board's *ex-officio* members are automatically the President/Superintendent of College of Marin and the President of the College's Board of Trustees. Board members who resigned were reluctant to discuss

Version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA), and Enhanced Disclosures for All Endowment Funds (Codification Topic 958-205).

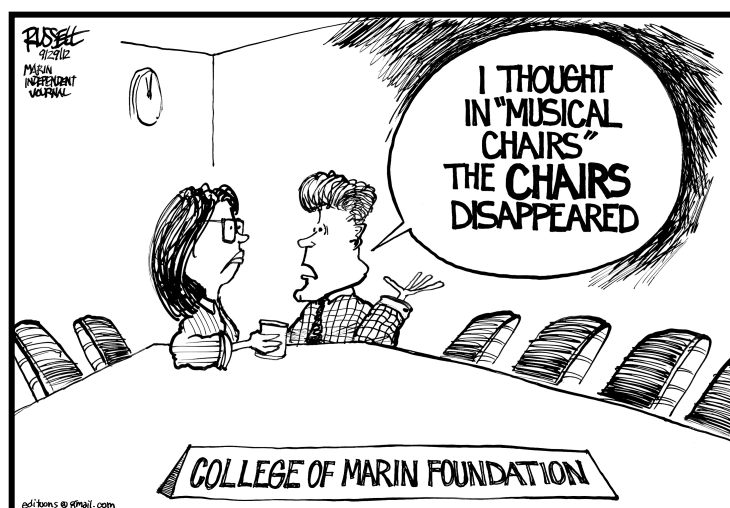
⁷ May 15, 2012 letter from College Board student trustee, to College of Marin Foundation Board President.

these claims, but indicated in their letter of resignation (Appendix B) that there was a significant difference of opinion over the way the Foundation should be administered. Regardless of their cause, the result of the resignations was that the two *ex-officio* members of the Foundation Board assumed temporary control and are, as of the date of this report, the Treasurer and President of what remains of the organization's management.

Neither of two inquiries into Foundation finances had been finalized when the mass departure of Board members occurred and the *ex-officio* members took the Foundation's reins. The first was conducted by KPMG LLP, a firm engaged by the Foundation Board and was of limited scope. It dealt with issues associated with allegations in the media and elsewhere about the potential mishandling of funds noted earlier in this report. (See Appendix C for Foundation Board letter regarding KPMG findings.) The second was an audit conducted by Crowe Horwath LLP, a firm commissioned by the College. The Crowe Horwath audit covered Foundation finances from July 2011 up to and including June 30, 2012.

After the September 2012 resignation of the nine Board members, the Foundation was left without an Executive Director. Therefore, in addition to their newly acquired multiple Foundation titles, the *ex-officio* members inherited all the problems associated with the Foundation and to some degree, according to interviews with donors, the public's perception that donations should be withheld until the "smoke cleared."

In December 2012, the President of the College's Board of Trustees - one of the two *ex-officio* members of the Foundation's Board - one-year term ended. In an open session of the Board of Trustees on April 20, 2013, the new President of the College's Board of Trustees delegated his *ex-officio* duties to the former president and continuing trustee. This was accomplished in accordance with Article 14, Section 1 of the By-Laws, titled, *Ex-Officio* Directors (Appendix D). Delegation of *ex-officio* duties to someone familiar with the problems of the Foundation provides continuity to the dissolution process.



Marin Independent Journal, September 29, 2012

APPROACH

The Grand Jury utilized the methods listed below to gather information in the course of their investigation.

Conducted interviews of:

- Current and former Foundation board members
- Current and former College of Marin Trustees
- Current and former donors to the Foundation

Reviewed the public records listed below:

- Federal Internal Revenue Service USC Sections 501(c), 501(c)(3) relating to non-profit organizations and California Revenue and Tax Code statute 23701e
- On-line materials relating to how non-profit organizations are formed, how they are to function under the law, what is expected of board members, guidelines for the appropriate handling of operating costs, etc.
- College of Marin Foundation's Charter, Articles of Incorporation and By-Laws
- Materials available on-line relating to the Foundation

Examined those portions of audit reports not subject to confidentiality agreements provided by the following entities:

- KPMG, LLP, an independent auditing firm hired to review the Foundation's financial practices
- Crowe Horwath LLP, an independent firm hired by the College to conduct in-depth audits of College of Marin and the Foundation's financial records

Considered materials from these sources:

- Print and video media reports relating to the Foundation
- Various materials provided by College of Marin
- Foundation correspondence to donors and College administrators
- Materials supplied by College administration describing their analysis of the Crowe Horwath LLP audit findings
- On-line sites that provide material relating to the Foundation's not-for-profit status
- College of Marin Forum for donor discussion of the Foundation, April 1, 2013

DISCUSSION

THE CURRENT STATE OF THE FOUNDATION

The Marin County Civil Grand Jury's investigation has intentionally omitted the issue of what has occurred in terms of claims and counterclaims involving the Foundation, the Board and its members for others to explore, except where including a discussion of these issues clarifies the current situation and/or relates to future decisions. Instead, we seek to provide county residents and potential donors with more complete answers to what may be their most vexing questions relating to the Foundation and to determine

whether there is a safe vehicle for present and future donations in support of the students and programs of the College.

The Public Face of Current Problems



Marin Independent Journal, April 5, 2013

The media have generally ascribed the Foundation's current state to potential mismanagement under a series of Boards of Directors and Executive Directors. An abrupt mass resignation of board members, employee and Executive Director dismissals, resignations and similar events, along with dwindling assets and allegations of mishandling of funds and other financial irregularities, trouble those who have consistently supported the College's students and programs with their donations. The turmoil has left in its wake distrust of the Foundation and questions about the association between it and the fundraising efforts of the College itself. Donors interviewed expressed concern over the potential loss of their previous donations. Donors and potential donors have a sense that, given the apparent instability of the situation, donating to the Foundation or even to the College may be unwise.

The turmoil and flux within the Foundation has led the Grand Jury to conclude that until the College, or whatever organization emerges as the Foundation's successor, can assure donors their contributions will be handled appropriately and in accordance with their wishes, many donors may end years of regular contributions. In the short term, the absence of these funds will have a negative effect on COM students, programs and departments.

The Questions:

Among the questions to which we sought more complete answers are the following:

1. What is the current status of the Foundation as a corporation?
2. What remains of funds donated to the Foundation, including those made directly to the College?

3. How safe are those funds?
4. What has become of the disputed \$1.8 million donated to College of Marin and subsequently deposited with the Foundation to manage?
5. What does the future hold for the Foundation and/or its successor organization?
6. What mechanism is in place or planned to replenish depleted Foundation funds?
7. Are donations currently being accepted?
8. What steps are being taken to ensure future donations to the College and those assets currently held by the Foundation will be handled appropriately?

The members of the current Foundation Board (which, to reiterate, consists exclusively of the President of the College and the former head of the College's Board of Trustees, now the current Foundation Secretary/Treasurer and President respectively) have taken steps to answer each of these questions. Over the last several months they have reviewed documents held and/or created by previous Boards in an effort to gain clarity regarding the status of the Foundation and its assets.

On April 1, 2013, the current Foundation Board invited Foundation donors and the public to a forum at the College. The topic was the Foundation's current status, and the intent of the meeting was to address some of these questions and discuss the results of the recently completed Crowe Horwath audit of the Foundation's finances.⁸ The audit results were not an expression of opinion "*on the effectiveness of the Foundation's internal control*" prior to June 30, 2012, but an overview of recordkeeping, financial controls and Foundation assets.⁹

With information based largely upon the findings of that audit and a subsequent unaudited financial statement prepared by the College for the period July 1, 2012 through December 31, 2012, the Foundation Board members described the current financial status of the Foundation and provided their assessment of how the Foundation had come to its present financial state. They also touched upon future prospects for its continued existence, but due to the brevity of the meeting (less than one hour), the material covered was a general review, not an exhaustive explanation, of what the audit revealed. Copies of the audit were provided and posted on the College's website. The media have reported on the meeting and the audit (and, in very general terms, on the results of the previous KPMG inquiry).¹⁰ However, they too have been able to provide only a limited amount of specific information to the public, given the space and time they can allot such matters. That is what we, the Grand Jury, provide below.

⁸ Marin Independent Journal, April 1, 2013, "Officials: More than \$400,000 misspent at College of Marin Foundation."

⁹ Letter from Crowe Horwath LLP, March 28, 2013, transmitting audit results to the College of Marin Foundation, p. 1.

¹⁰ Marin Independent Journal, July 1, 2012, pp. 1 and 2, "Legal showdown averted."

The Answers:

1. What is the current status of the Foundation as a corporation?

As stated earlier, the Foundation can best be described as "dormant." The two remaining Board members are actively seeking the assistance of the Office of the State Attorney General (AG)¹¹ to define what steps may be taken from this point forward. The AG's office will determine if there is a basis for legal action, for example, and in the event the decision is made to dissolve the Foundation, how that process will unfold.

The only funds available for disbursement are those designated "permanently restricted." These funds have been the source of the bulk of scholarship monies flowing from the Foundation. They are intact and represent the interest earned on invested Endowment Funds. Therefore, the awarding of scholarships is to continue. The most recent of these awards were given out May 22, 2013, as scheduled and promised by the Foundation's principals.

The Associated Students of College of Marin offered \$30,000 to the College in the event scholarships could not be given out this year due to the problems associated with the Foundation. However, College administrators declined the offer and have funded the scholarships through regular channels.

2. What remains of funds donated to the Foundation, including donations made directly to the College?

An audit of the Foundation's finances from the closing date of the Crowe Horwath audit, June 30, 2012, to close of business, December 31, 2012, was accomplished through the combined efforts of College and Foundation staff and legal counsel, with assistance from Crowe Horwath LLP. The audit was to "...retroactively construct financial statements for the months of July of 2012 through December of 2012."¹² The results depict the most recent state of Foundation finances (Appendix E). By December 31, 2012, according to bank and other financial records examined, the unaudited total Foundation assets had increased to \$3,837,668. Depreciable capital assets (desks, file cabinets and the like) amounted to \$4,048. Restricted funds remained negative \$464,464.

To express this negative balance more clearly, when expenditures for consultants, lawyers and other similar services exceeded the operations budget for the Foundation, the balance of the fund to pay such items became negative. Thus, the sub-fund for such purposes became negative.

Quoting the May 8, 2013 letter to donors from the present Foundation Board:

The audit findings show that the fiscal year 2011-2012 operating budget

¹¹ Under Section 5310(6) of the Nonprofit Public Benefit Corporation Law of the State of California, the Office of the State Attorney General has oversight in matters of this sort.

¹² Undated Transmittal letter, College of Marin Foundation, audit results June 30, 2012 through December 31, 2012, p. 2 (See Appendix E).

adopted by the Foundation board of directors projected operating expenses totaling \$286,100 (not including grants and scholarships). Actual expenditures for operations during the same period totaled \$760,673 (excluding activity related to grants and scholarships). The significant difference between the approved budget and actual expenses for the year were attributed to extensive use of professional services and other expenses, including legal fees, general consultants, offsite lease, and accounting fees.

In April 2012, The [sic] Foundation directors discharged the Foundation's longtime bookkeeper prior to his completion of the March 2012 financial statements. Subsequently, the Foundation board depleted funds in restricted program accounts to pay for the unbudgeted expenses that were incurred during fiscal year 2011-2012. It is relevant to note that in the years prior to fiscal 2011-2012, the Foundation consistently had clean audits and no overspending or misuse of restricted funds.

The Bad News

The Foundation's Restricted funds are gone

Of the one hundred sixty-four Restricted Fund accounts (Appendix F) totaling \$446,245.53 as of December 31, 2012, not one remains intact. These accounts represent direct donations to both the Foundation and the College and were designated for specific purposes. While the total dollar amount associated with these accounts has fluctuated slightly since 2011, the current estimated amount repurposed to uses other than those designated by the donor is \$464,464 and nothing of that amount remains.

These accounts are in the process of being closed and the Foundation's managerial and custodial role for them will be terminated upon completion of that process. New program accounts have not yet been established, including any emergency grant funding for students in immediate need of financial assistance. When these new accounts are opened, they will be created under the aegis of the successor organization to the Foundation, whether that is the College's Advancement Office currently overseeing donations to the College and the Foundation, or some separate agent acting on the College's behalf. If the former, the College will be required to assume all management and accounting responsibilities for these and establish non-profit status with the IRS and the State of California.

The grants portion of these Restricted Funds is \$115,688. The three largest of these, ECE Learning Community (Early Childhood Education Learning Community), MCF/ESL (Marin Community Foundation/English as a Second Language) and MEF Childcare (Marin Education Fund), total more than \$114,000. These grant funds no longer exist. According to Foundation Directors, reconstituting them, as well as the other funds, is a priority.

The Good News

Individual and Program Endowment funds are intact

The seventy-six Individual Endowment funds and three Endowment Program funds remain whole (Appendix G). They too, were merged accounts from the College and the Foundation and amounted to \$3,837,096.62 as of December 31, 2012.

Permanently Restricted funds are intact

The interest from these endowment funds as of December 31, 2012 totaled \$197,052. This money is the source of scholarships, including those awarded in May 2012.

The Foundation's Current Assets

In sum, the Crowe Horwath audit determined the Foundation's assets stood at \$3,805,732 as of the final date of their review, June 30, 2012. The Foundation's assets had been \$4,508,784 in a July 1, 2011 audit. Between June 30, 2012 and December 31, 2012, \$31,364 was added to the Foundation's assets. Of those Foundation assets, \$3,654,237 is held in mutual funds through Wells Fargo Bank. These figures represent all Foundation assets, including, but not limited to, donations to the College as well as to the Foundation at that moment in time. (Appendix E)

Where did the money go?

Auditors' remarks regarding the encroachment of restricted funds:

The Crowe Horwath audit made the following observation on Page 2:

During Fiscal year 2012, the Foundation expended program funds held for restricted purposes to support the operations of the Foundation. For of (sic) the year ended June 30, 2012, expenditures of restricted funds to supporting (sic) ongoing operations totaled \$329,094. Management of the Foundation has projected the total encroachment of restricted funds to support Foundation operations at December 31, 2012 to total \$464,464. Subsequent to December 31, 2012, the Foundation operations were minimal.¹³

The operating budget and expenses projected and adopted by the Foundation's Board of Directors for fiscal year 2012 (excluding grants, scholarships, and the like) totaled \$286,100. Actual expenditures for the year ending June 30, 2012 (again, excluding grants, scholarships, and the like) totaled \$760,673, thus exceeding the approved budget by \$474,573. The difference between what was budgeted and what was spent reflects expenditures for a variety of professional services, including attorney, auditing, and accountant fees, general consultant and contractor fees, and the salaries of temporary employees. These professional services accounted for \$403,362 of the \$474,573 noted above. The approved budget for those kinds of services was \$7,200.

¹³ Crowe Horwath LLD report to the Board of Directors of College of Marin Foundation, page 2, Budgetary Controls-Encroachment of Restricted Funds, a Material Weakness (Appendix H).

According to the Crowe Horwath report, in addition to these expenditures, \$25,000 was spent on “*unbudgeted other expenses.*” The approved amount allocated for this segment of the budget for the year was \$10,000, resulting in an actual total expenditure of \$35,000. This figure includes the cost of an offsite lease for a Foundation office on Sir Francis Drake Boulevard, Kentfield, although permanent Foundation offices are located on the College’s Kentfield campus. This amount also included moving and supply costs, bank fees, and other miscellaneous expenses. The Crowe Horwath audit noted, “*The budget variances were communicated at the Foundation board meetings, however, no action was taken to amend the approved budget.*”¹⁴ This was reflected in Board minutes available upon request from the Foundation.

Auditors’ recommendations and additional findings

The auditing firm recommended that the Foundation Board should institute a

...policy prohibiting the use of restricted funds for purposes other than in which (sic) they were entrusted to the Foundation. The Foundation should have a clearly established operating budget representing the actual expected activity for the fiscal year. Amendments to the adopted budget should be approved by the Finance Committee and the Board of Directors. The amended budget should be clearly documented in the minutes of the Finance Committee and the Board of Directors¹⁵ The amended budget should be clearly documented in the minutes of the Finance Committee and Board of Directors. Management should not disburse funds which do not agree with the budgetary plan established by the Board.

...The Foundation should develop a plan to correct the encroachment on restricted funds and to address the potential impact on the Foundation regarding a return of funds to grantors or donors for using restricted funds for operations.¹⁶

Additional audit findings: the absence of donor letters and accounts payable irregularities

Crowe Horwath also reported they were unable to locate eleven donor letters. On its face, this may seem insignificant, but these documents support the restricted use of donations entrusted to the Foundation. In their observations, Crowe Horwath remarked:

In some instances, the restricted purpose was established by the Foundation a significant number of years prior to fiscal year 2012. In each instance where a donor letter could not be found, the Foundation did demonstrate a consistent use of the funds spanning multiple fiscal years. This method to support the

¹⁴ Crowe Horwath LLD report to the Board of Directors of College of Marin Foundation, page 2.

¹⁵ Foundation’s By-Laws provide for a Finance Committee chaired by the Treasurer of the Foundation and an unspecified number of other Board members.

¹⁶ Crowe Horwath LLD report to the Board of Directors of College of Marin Foundation, page 2.

*proper and consistent use of restricted funds has been utilized by the Foundation in prior year fiscal year audits. Without the original donor letter the risk exists for restricted funds to be spent for purposes other than the intended use of the donor.*¹⁷

The audit noted an additional material finding related to the Foundation's accounts payable, in effect, that they be posted in the year the activity occurred. Originally, some \$85,455 in additional expenses associated with operational costs for the College District's Skills and Career Bridges program, and equipment for classes as well as for accounting work were to be reported in 2013, but instead should have been recorded in 2012. Crowe Horwath adjusted the Foundation's June 30, 2012 financial position accordingly and recommended that each Foundation disbursement be charged to the appropriate financial period and even as yet unbilled services should be estimated and accounted for at the close of each financial period.¹⁸

3. How safe are these funds?

The endowment funds, as we have described above, are intact and preserved as per the donor's wishes, with the fair value at the time the gift was made, preserved. The Foundation had followed the investment and spending policies for endowment assets to provide a predictable stream of funding to programs the endowment supports. These funds are managed by Wells Fargo Bank and invested in T. Rowe Price Mutual Funds as well as Vanguard Mutual Funds, conservative investment vehicles. Additionally, \$350,000 of the total is in the County Treasury where it is safe, but earnings are minimal. Although earning optimization for all invested funds has been the goal, preserving the amount of the original donation is the chief consideration.

Crowe Horwath made recommendations based upon their findings regarding the Foundation and how funds are to be managed. While it should be anticipated the Foundation or its successor organization will operate according to the guidelines and laws governing nonprofit organizations, the intervention of the State Attorney General's office to oversee the dissolution of the Foundation is likely to send a sobering message to any subsequent organization. Current fundraising and disbursement is part of the College's Advancement Office. Due to the lack of Foundation operating funds, there is no money to pay an Executive Director or other staff to manage the donations. The Board's Secretary/Treasurer is acting Executive Manager (an unpaid position) for the Foundation and is the only one able to make disbursements from these funds.

4. What has become of \$1.8 million donated directly to College of Marin and subsequently deposited with the Foundation to manage?

The disputed \$1.8 million, a source of contention between the Foundation's earlier Boards and the College, is an approximation of the amount received by the College

¹⁷ Ibid.

¹⁸ Ibid. p.1

through donations and placed in either the Restricted or Endowment fund category. When the funds transfer to the Foundation was instituted on an ongoing basis more than a decade ago, these funds were added to like Foundation funds--College Endowments to the Foundation Endowment list, College Restricted donations to the Foundation's list of Restricted funds--a procedure that persisted until recently. Those funds in Endowment accounts have been preserved. Those in the Restricted Fund are gone.

5. What does the future hold for the Foundation and/or its successor organization?

There are three primary components to the answer of what lies ahead for the Foundation and any successor organization. The first component, the Foundation's Board members' discussions with the State Attorney General's Office, will shape what the latter terms an "involuntary dissolution" of the Foundation and determine what is required of the Foundation to complete the process. The second is the fact no money remains for operating the Foundation or any successor fundraising body. The third is what existing or yet-to-be-developed organization will become the fundraising standard-bearer and repository for donations to departments, programs and student welfare associated with College of Marin.

The first component

The current Foundation Board engaged Crowe Horwath not only to audit the Foundation, but also to provide the basis for dissolution (referred to as "liquidation" in their report). Dissolution requires a complete financial audit in order for the process to begin under the State of California Attorney General's direction. The AG's Office, in conjunction with the College and Foundation Board, has yet to set the wheels in motion to dissolve the Foundation, therefore, the path ahead with regard to this component is still to be determined.

Before the Foundation can be dissolved, the Board must file forms that are past due with the AG's Registry of Charitable Trusts office and the IRS. These forms were filed in a timely manner annually to cover through June 30, 2012, but were not filed to cover the current fiscal year. Once submitted, the Board can move toward dissolution, first by voting to dissolve the Foundation and filing the vote (with the Foundation's final state and federal tax returns verifying assets) with the AG. Remaining assets must be expressly dedicated to tax-exempt purposes and the recipient is reviewed by the AG. When the recipient's eligibility to receive the funds is verified, the AG will generate a Dissolution Waiver that allows the dissolution to proceed. However, a number of additional documents are required by both the AG and the Secretary of State in order for the Foundation to be removed from the state and federal lists of charitable

organizations.¹⁹ The one impediment to the dissolution process is that if any document is filed with the AG's office suggesting there may have been mishandling of funds, the Foundation's assets must remain "frozen" until the issue of the funds' use is resolved.

The second component

The Crowe Horwath audit, as we have seen, confirmed there are no funds remaining for operating costs the current Foundation Board might incur. Since Restricted Funds are entirely depleted, there is no other source available for this purpose. All funds that should have allowed the Foundation, or its successor organization, to operate have been exhausted. Therefore, even though hiring a professional team or individual to fundraise and manage donations might seem the best way forward, it is not an option.

The third component

As noted earlier, the College's Advancement Office is currently handling all fundraising and associated actions. Previously referred to as Communications and Community Relations, the office has been in existence for several years, as, always with multiple functions. Collection and disbursement of donations became part of its mission only recently, following notification to the Foundation in mid-2011 by College administrators that the College wished to add fundraising to the Advancement Office's functions. The College, as a non-profit organization, must file for non-profit status under USC 501(c)(3) and California statute 23701e, or face some potential limitations to the sources of donations that can be declared tax deductible. As of early May 2013, according to AG's Office personnel, these forms had not been filed.

The Marin Community Fund and/or other similar organizations might be engaged to manage remaining Foundation assets while actual fundraising would remain with the College. The Foundation Board is exploring this option currently but cannot act until the Attorney General's Office sets the course of action toward dissolution of the Foundation. Until then, funds other than those used for scholarships are frozen. Discussions can, of course, occur, but no action can flow from those discussions.

6. What mechanism is in place or planned to replenish Foundation funds that have been depleted?

In the Audit Notes²⁰ produced by the College (Appendix E), several pertinent statements are made. Those that are cited herein were accompanied by a March 28,

¹⁹ State Form RRF-1, Annual Registration Renewal Fee Report to Attorney General of California, for 2012. This form, to be completed by all charitable nonprofit organizations every fiscal year, is designed to help detect charity fiscal mismanagement, and renews the organization's registration as a public benefit corporation. It must be filed within four months and fifteen days of the end of an organization's accounting period that, in the case of the Foundation, would have been no later than November 15, 2012. The Foundation must also file IRS Form 990, an annually required submission, in order to retain its tax-exempt status.

2013 letter from Crowe Horwath, to the Board of Directors, College of Marin Foundation, and set forth the following with regard to those College-produced notes and audit:

We have audited the accompanying statement of financial position in liquidation of College of Marin Foundation (the "foundation") as of June 30, 2012, and the related statements of activities and cash flows in liquidation for the year then ended. These financial statements are the responsibility of the Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audit.

...As described in Note 5 to the financial statements, management of College of Marin Foundation approved a plan of liquidation, and the Foundation is in process of commenced liquidation. As a result the Foundation has changed its basis of accounting from the going concern basis to a liquidation basis.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position in liquidation for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

With this information in mind, under the heading **Use of Donor Restricted Assets**, Note 4, page 9 of the Audit refers to the inappropriate use of donor funds.

The Foundation has utilized certain donor-restricted assets amounting to \$329,094, for ongoing operations. The amount of certain donor-restricted net assets used for ongoing operations totaled \$464,464 at December 31, 2012. These donor-restricted funds are required to be reestablished by the Foundation or the donor must approve the removal of the restriction. At June 30, 2012, the Foundation had not received the approval to remove certain restrictions from donors.

These restricted fund accounts were created, in most cases, decades ago. The unfortunate consequence of the passage of time is that, according to Foundation staff, few of the originators of these funds are alive so that gaining approval to remove the use restrictions falls to their heirs, if any. Other potential avenues to restore these funds are being explored, including, perhaps, a remedy through the Office of the State Attorney General. However, this aspect of the problem is one that may not yield to a solution. It may be that many of these funds will never be reconstituted and the only hope is to rely upon future donations in support of the College's students and programs.

7. Are donations currently being accepted?

²⁰ The audit of Foundation financial records from June 30, 2012 to December 31, 2012, was accompanied by a four page document, entitled, "Notes." These Notes, in addition to the audit itself, were reviewed and approved by Crowe Horwath (See Appendix E).

In an effort to ensure appropriate handling of existing and future contributions, the Advancement Office, manned by College staff, has been charged with accepting and raising funds and controlling their disbursement, the latter, in accordance with purposes designated by the donor. The Foundation itself is continuing to receive contributions for the College. These are largely from trusts and other devices that require automatic disbursement of the contribution. A recent contribution of more than \$250,000 from a trust was received by the Foundation upon the death of the trustee. That money is reflected in Endowments. Recent contributions have totaled approximately \$350,000, and include that bequest.

Soon after questions arose regarding how the Foundation was handling funds in its control, those associated with the Disabled Students Program and Services, College of Marin, chose to move their fund's assets to MarinLink, a site that provides administrative support and tax-exempt status for individuals and community-based organizations. Donations to that organization can be accomplished directly through their website, <http://marinlink.org/>.

As noted earlier, an issue that currently looms large for corporate donors to the College is the latter's lack of USC 501(c)(3) and State of California Revenue and Tax Code Section 23701e status. While individuals can deduct contributions to the College on their taxes as a charitable donation, some corporate donors have experienced problems. According to an AG Office representative, donations can be claimed only if made to charitable organizations with the required documents to claim tax-exempt status on file.

8. What steps are being taken to ensure future donations to the College and assets currently held by the Foundation will be handled appropriately?

While remaining funds may be considered safe, questions still surround the issue of how depleted funds will be replenished and what guarantees exist to ensure future donations will be handled in accordance with donors' desires.

Media attention to the Foundation's financial and staffing issues has focused donor concerns and the April 1, 2013 Forum at the College provided only an overview. Through interviews of donors, it is apparent they require more than a general accounting of the present state of the Foundation's funds. It was our intent with this report to provide an additional layer of information between what the Foundation has released publicly and what has appeared in the media over the last year. Donors want to know precisely what happened to the money they donated and they, as well as prospective donors, expressed a need for a more comprehensive explanation of the current state of the Foundation and its future.

While the Forum did apprise donors and interested members of the public of the Foundation's status and the status of their contributions in general terms, more transparency is required in light of the recent history of the Foundation. Donors will continue to require information regarding the status of the Foundation, ongoing efforts

to restore the lost monies, clarity regarding the state of current donations, and Attorney General involvement. Donors will have an interest in any move toward creating a successor organization or merger with an existing organization with a history of successful charitable fund management. Donors who were interviewed also expressed the desire to have a means to verify that any new donations they make have been and/or will be disbursed for the purposes they intend and no other.

The other overarching issue is repairing any damage done to the fundraising capabilities of the College by the media reports, rumors, and even the Forum release of the Crowe Horwath audit results. Restoring donor faith in the donation process must underlie the road ahead.

The question remains as to how that can be accomplished. Decisive actions by the Foundation Board based upon the Attorney General's direction will provide some reassurance to potential donors that the instability and uncertainty of the last two years is in the past.

The goal of all concerned should be to restore donor faith to fundraising efforts and generate new donations for those programs and individuals within the College in need of financial support. The needs still exist. Whether the community can get beyond the problems of the past is a question that will be answered in the months ahead.

FINDINGS

- F1. Historically, there has been a lack of transparency regarding the Foundation's methods and financial circumstances and this has led to spending donor funds on non-donor designated purposes.
- F2. As of the date of this report's finalization, the Advancement Office of College of Marin is neither a USC 501(c)(3) nor a California State 23701e-designated non-profit organization and this creates potential problems for the acceptance of corporate donations.
- F3. As of the date of this report's finalization, The Foundation has not filed IRS Form 990 and California State Form RRF-1 since 2011. These forms are required to be submitted every fiscal year in order to renew an organization's tax-exempt status.
- F4. The College is currently in charge of all Foundation assets and with that comes potential for a conflict of interest.
- F5. No source for emergency funds exists for students in immediate need of financial assistance since Restricted funds were repurposed.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. The Board of Directors of the current Foundation and any successor organization collecting funds in support of College of Marin, its students, programs and departments, make public, on a quarterly basis, the status of the Foundation or its successor, its assets and plans for the immediate future.
- R2. College of Marin's Advancement Office file for USC 501(c)(3) and State of California 23701e status.
- R3. The Foundation immediately file IRS Form 990 Return of Organization Exempt from Income Tax, and State Form RRF-1, Annual Registration Renewal Fee Report to Attorney General of California, for 2012 to renew the organization's registration as a public benefit corporation. These forms must be on file for the Foundation to collect money legally or to proceed with dissolution.
- R4. The College, immediately following the dissolution of the Foundation, create an independent body to collect and administer donations to benefit students and programs of the College.
- R5. College of Marin's Office of Advancement contact outside sources, including service groups, to arrange for emergency funds for students in immediate need of financial assistance until a permanent program to address these needs is established.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following individuals:

- President and *Ex-Officio* of College of Marin Foundation Board to all Findings and Recommendations
- Secretary Treasurer and *Ex-Officio* of College of Marin Foundation Board to all Findings and Recommendations

The grand jury invites responses from the following individuals:

- Former Student Member, College of Marin Board of Trustees to all Findings and Recommendations
- Former bookkeeper, College of Marin Foundation to all Findings and Recommendations
- Foundation Board members from July 2011 through September 2012 to all Findings and Recommendations

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

GLOSSARY

College of Marin Board of Trustees: a nonpartisan, publicly elected group of seven voting members and one non-voting student member, the latter elected by the student body. The Board governs College of Marin. Regular Board members serve four-year terms with staggered elections every two years. The student member serves for one year. The Board is responsible to the public, and has the authority to appoint the College president/superintendent and other administrative personnel, faculty members, and members of the board in the event of a vacancy.²¹

College of Marin: a public community college, one of 112 in California. It is fully accredited by the Western Association of Schools and Colleges and enrolls approximately 10,000 credit and noncredit students each fall and spring semester. It has two campuses, the main Kentfield campus, 835 College Avenue, Kentfield, CA 94904 and the Indian Valley campus, 1800 Ignacio Blvd., Novato, CA 94949.

Crowe Horwath LLP: a professional services firm with clients worldwide. The firm provided external audits of College of Marin and College of Marin Foundation finances and business practices in 2012 and 2013 respectively. These audits were performed at the behest of College of Marin administrators

Executive Director: a salaried employee hired by a Board of Directors to manage an organization, such as a non-profit educational fundraising foundation.

Ex-officio member: a member of a board solely by virtue of holding another office. In the case of non-profit organizations such as College of Marin Foundation, the Articles of Incorporation or other governance documents spell out the role and the rights of these members. *Ex-officio* members often will abstain from voting, but unless the organization restricts this right, they are afforded the same rights as other board members. College of Marin Foundation's 1965 Charter specifies that the President/Superintendent of College of Marin and the President of College of Marin's Board of Trustees are automatically the *ex-officio* members of the Foundation Board.

College of Marin Foundation: chartered and incorporated June 9, 1964 the nonprofit organization was formed by a group of private citizens originally to fund scholarships for students at College of Marin. The Foundation was granted non-profit status under federal and state statutes with a twofold function: to develop and "mine" donation sources and appropriately disburse those funds in accordance with law and donor wishes.

KPMG LLP: the U.S. member firm of KPMG International Cooperative. Its international member firms provide professional audit, tax and advisory services in 152 countries. They performed a brief examination of the Foundation's financial records in 2012, an examination paid for by the Foundation.

²¹ From Wikipedia and marin.edu/com/board_of_trustees

APPENDIX A

Letter from College of Marin Student Trustee to the President of the Foundation Board, May 2012

page 1 of 2

(addresses redacted, Marin County Civil Grand Jury)

Tuesday, May 15, 2012

I President, College of Marin Foundation Board of Directors

Dear M

As the chief representative of the students elected by the students and as a student leader within the Associated Students of College of Marin ("ASCOM"), I am concerned about the large amounts of money that ASCOM donates to the foundation annually. It is in my duties as the students' trustee that I am writing to you. As the representative for the very students that receive all of the College of Marin scholarship funds, I have a number of concerns.

After being escorted from the regular April meeting of the College of Marin Foundation ("COMF") Board of Directors, before the Executive Director's report, by the Foundation's legal counsel, I decided to look further into the recent set of events at the COMF. Later the next week, I was informed that the newly hired Executive Director was no longer employed by the COMF.

It was then, that I started my search for information with the minutes for the March 23rd, 2012 COMF Board of Directors meeting, which was provided to me at the COMF Board meeting. (Please see the attached.) These minutes brought up a number of important questions that I believe have to be answered:

A) At the meeting I attended, an attorney was present. How much money has the foundation spent on legal fees in the 2012 calendar year? Please explain the foundation's need for an attorney, especially at Board meetings.

B) Why was it necessary to remove an entire paragraph from the COMF Board of Directors, October 2011 minutes? (March 23rd minutes page 1)

C) The minutes suggest that the Foundation rents off-campus office space that the Foundation is not using. (March 23rd minutes page 2) What is the purpose of this facility and is it necessary to fulfill the foundation's mission?

D) The minutes also state that the "COMF has had to liquidate \$500,000 to cover interfund transfers. The problem is the investment fund generates \$150 – 160k which is not enough to cover administrative costs." (March 23rd minutes page 2) I am concerned that a half million dollars is being liquidated

to cover administrative costs for a foundation that raises less than "\$65k per annum." (March 23rd minutes page 2) Please fully explain the need to dig this deeply into the corpus of the COMF endowment.

E) Within the Finance Committee's report, N refers to the need for a

APPENDIX A - CONTINUED

Letter from College of Marin Student Trustee to the President of the Foundation Board, May 2012

page 2 of 2

“forensic accountant.” (March 23rd minutes page 3) This is very alarming to me. Please explain why this would even be brought up at a board meeting.

F) Within the Banking Report, I mentioned that COMF’s accounts will be moved to Bank of Marin so that she can “monitor the situation.” (March 23rd minutes page 4) What situation?

G) Within the Governance Committee report I asked questions why COMF is audited in conjunction with the College of Marin. “President I asked how we could be excused from the audit.” (March 23rd minutes page 4) “Suggestion was made to check COMF by-laws – we can do our own independent audit and COM can fight COMF on it.” (March 23rd minutes page 4) This is very alarming, why is there a desire to not be audited?

E) What is the reason for the quick turnaround in COMF Executive Directors and how is the COMF prepared to deal with the possible knowledge vacuum?

F) According to my research, COMF has not filed its taxes in 2 years. Is this true? What is the reason for this?

The COMF should be able to answer these questions, which are so intrinsically tied to its mission and its own fiscal responsibility. I, as the formal representative of the students to the College of Marin Board of Trustees, feel compelled to seek the answers to these questions and ensure the safety of the student scholarships that the foundation has hosted for over 48 years.

If I don’t receive satisfactory answers within 3 business days of the acceptance of this letter, I will be compelled to act. I will provide the Marin Independent Journal with my questions, your answers or lack thereof and a copy of your March 2012 minutes from which my questions are derived.

If you or your staff is unable to provide what you deem to be satisfactory answers, I ask that you and the entire Executive Board of the College of Marin foundation honorably step down. In which case, I will hold my questions from the press, and the foundation would be able to continue, under the leadership of a new Board of Directors.

I look forward to a response that will quell my concerns.

Sincerely,

College of Marin, Student Trustee

APPENDIX B

Letter of resignation, September 17, 2012, from College Marin Foundation Board to Ex-Officio Director, College of Marin Foundation, Inc.

page 1 of 6



*Transforming Lives
Through Educational
Opportunity*

Board of Directors
Joan Bennett
President
Sidney N. Baskin
Vic Canby
Margaret E. Deedy
Ann Hill
Peggy Keon
Dennis MacDonnell
Diana Putterman
Jack Wilkinson

Ex-Officio Directors
David W. Coon, EdD,
College of Marin
Superintendent/President

Diana Conti,
President, College of Marin
Board of Trustees

Director Emeritus
Charles E. Gompertz

Honorary Consultants
to the Board
Joan E. Capurro
R. Oak Dowling
J. Galen Foster
Patricia York Schumacher

P.O. Box 325
Kentfield, CA 94914
415.485.9657
415.485.1379 fax

Info@collegeofmarinfoundation.org
www.comf.org

September 17, 2012

VIA E-MAIL ONLY:

Ex-Officio Director
College of Marin Foundation, Inc.
835 College Avenue
Kentfield, California 94904

RE: College of Marin Foundation, Inc.

Dear :

After considerable deliberation, the signatories of this letter, each of whom is an incumbent director of the College of Marin Foundation, Inc. (the "Foundation") has come to the conclusion that the goal of the College of Marin (the "College") is not to be a working partner with the Foundation for the benefit of its students, but that the College (led by a majority of its Board of Trustees) will only be satisfied if it can obtain 100% of the donations of the Foundation without being obligated to expend those funds in conformance with the donor intent; in short, we believe, despite your legal counsel's representations to the contrary, that the College wants the funds to use with no strings attached. As you are aware, most of the all-volunteer Board joined the Foundation in December 2011 and as late as June 2012

Upon joining the Board, we took several steps to secure the Foundation's finances, books and records from the resigning executive director, institute financial controls, and took steps to reduce costs such as canceling independent contractor agreements with certain fundraisers. You and the College, on the other hand, blocked access to the Foundation offices in January and February 2012, in violation of the Memorandum of Understanding that governs the relationship of the Foundation and the College, which forced the Foundation's Board to enter into a short term off-campus lease.

These new Board members, avoided raising its grievances with the College in the public and did our best to give the College the benefit of the doubt for some time, but it would seem that we were not dealing with an honest partner.

- a. The College and former staff members have lodged serious complaints against the Foundation in the Marin Independent Journal and at public meetings,

APPENDIX B - CONTINUED

Letter of resignation, September 17, 2012, from College Marin Foundation Board to Ex-Officio Director, College of Marin Foundation, Inc.

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including allegations of misuse of charitable assets. The College has additionally demanded the transfer of \$1.8 million dollars in charitable donations. The Foundation has taken good faith steps to address the concerns of the College and ensure transparency, including by:

- i. Engaging KPMG to conduct an independent investigation of the allegations made by the College and former staff members in the Marin Independent Journal. (We note that KPMG was originally contacted by the Foundation prior to the news article to perform an audit because of the Board's concern about prior staff's use of funds and the borrowing from the Restricted Fund, but instead determined that KPMG's independent investigation would better serve to resolve the allegations made in the press and the Board's concerns about financial controls.);
 - ii. Instructing KPMG to liaison with the College's auditors to try and facilitate your timely audit;
 - iii. Instructing KPMG to make the full report of the independent investigation available to the College upon completion;
 - iv. Engaging a non-profit bookkeeper to conduct a Financial Reconciliation to cure prior practices of former staff members, which resulted in inadequate financial controls;
 - v. Undergoing a Charitable Trust Reconciliation to cure prior practices of former staff members that resulted in inadequate record keeping, and to do our best to ensure that the Foundation understands each donor's charitable intent, and that the Foundation is honoring that intent in a manner consistent with California law;
 - vi. Having provided notice to the California Attorney General's Office about allegations of misuse of charitable assets, allegations made to the press, and the College's demand for the transfer of \$1.8 million dollars in charitable donations; and
 - vii. Instructing Foundation counsel to have an open dialogue with the College's counsel.
- b. The College, led by you and a majority of its Board of Trustees, has responded in a manner that the Foundation has determined evidences a lack of good faith to rebuild a partnership with the Foundation to benefit the students, including by:
- i. Continuing to demand the same documents that it has been informed are either unavailable, non-existent, or are pending the KPMG independent investigation, and/or the reconciliation of the Foundation's financials and charitable trusts. These continuing demands for information that the Foundation has promised to provide pending KPMG's independent investigation and the reconciliation, only serve to disrupt our operations and create significant additional legal and accounting expenses . . . even as the College has raised concerns about excessive expenses.

APPENDIX B - CONTINUED

Letter of resignation, September 17, 2012, from College Marin Foundation Board to Ex-Officio Director, College of Marin Foundation, Inc.

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- ii. Continuing to play out the dispute in the public arena by placing all blame on the Foundation, without substantively acknowledging the efforts of the Board (noted above), and ignoring the following:
 1. The majority of the "all volunteer" Board were not on the Board during the complained of allegations;
 2. The complained of allegations regarding donor funds and borrowing of restricted funds was a decades long operational practice, during which the President of the College and President Board of Trustees were ex-officio directors, whereby they received all agendas, all minutes, all reports, and regularly attended Board meetings. Further, the Foundation has participated in the College's annual audits by providing its financial data. The continued feigning of ignorance in the public arena is disingenuous at best;
 3. I, the prior President of the Foundation from July 1, 2010 to May 25, 2012, was the director that led the Board to change the staff's past practices of borrowing from restricted funds; and to seek greater financial transparency and control over the Foundation's finances from staff;
 4. As you are aware, the College has been attempting to get the Foundation to transfer \$1.8 million dollars directly to the College, but the Foundation has noted that it cannot do so en masse until the above KPMG investigation and reconciliations are complete. Further, the Foundation voiced concern that since the College is a government agency and not a non-profit it may be difficult to ensure that the College will honor donor intent, and even more to the point, that the College may not have any intention to honor donor intent. In deference to your request, however, the Foundation determined that it could transfer a particular restricted fund (donations raised for the benefit of one of the College's various departments) via a "Gift Over" agreement. As was made clear to your counsel, a Gift Over agreement would transfer the funds to the College subject to the College's contractual obligation to abide by the donors' charitable trust restrictions (i.e. ensure that the monies are spent in accordance with donor intent), and that if the College failed to abide by the charitable trust restrictions the donated funds would then be transferred from the College to a non-profit organization that would honor donor intent. Almost, immediately upon the Foundation's tentative agreement to make a Gift Over transfer, however, you personally emailed all department heads and instructed them to seek the immediate transfer of their restricted funds. The Foundation believes this request is in bad faith for the following reasons:
 - a. The College is aware that funds cannot be transferred en masse until our reconciliation and the KPMG investigation are completed;

APPENDIX B - CONTINUED

Letter of resignation, September 17, 2012, from College Marin Foundation Board to Ex-Officio Director, College of Marin Foundation, Inc.

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- b. The immediacy of the College's demand seemingly validates the Foundation's concern that the College simply wants the money with no strings attached and the reason for the immediacy of its email may have been to try and avoid the Foundation's requirement that the College abide by donor intent; and
- c. The College, via counsel, has been informed that ensuring compliance with donor intent for transferred funds is a fiduciary obligation of the Foundation's directors, yet it makes its demands nonetheless.

The distinctions between your fiduciary duties to the Foundation, a completely separate non-profit organization, and to the College, as a government agency, are important to note. The Foundation, as a non-profit public benefit corporation, is bound by the charitable limitations set by its donors ("Charitable Trusts"). For example, if the Foundation receives a donation arising from a fundraiser for the Athletic Department, the monies are deposited directly into the Foundation's money market account but assigned to the Athletic Department, and the use of those funds are restricted to be utilized to support the Athletic Department – these are the "Restricted Funds." (In that example, individual donors have donated funds to and entrusted the Foundation with ensuring that their donations are utilized for the benefit of the department.) The College to the contrary, as a government agency, would have no such limitation. Instead of being obliged to abide by the terms of an individual's charitable trust, the College is obliged to consider all of the citizens' concerns and needs, even if those needs differ from the wishes of the donors.

If the College, as a government agency, were to obtain the donated funds without the restrictions of a Gift Over agreement, the Foundation believes that the College would violate the charitable trust restrictions of the donors, and potentially even use monies restricted for the benefit of one of your department's, for non-departmental purposes such as additional capital improvements.

Based upon the determination of each of the undersigned board members that the College is not acting in good faith and, as presently constituted, the College's Board of Trustees will never be partners in serving the students, each of the undersigned Directors, pursuant to Section 5204(c) of the Corporations Code, herein provide the remaining members of the Board of the Foundation notice that he/she is resigning from the Foundation Board, effective immediately, leaving just the ex-officio directors on the Board. Additionally, the resigning board could no longer justify expending significant amounts of attorneys' fees to try and respond to the College's unreasonable repeated requests for information that you know will not be available until after the completion of the KPMG investigation and the above-described reconciliations. Continuing to expend the Foundation's funds without the potential of a good faith partner would be a futile exercise that further depletes funds that are better spent and preserved for the benefit of the College's students.

The resigning directors caution you that you should not see this as the College's having carte blanche to dispose of the donors funds without oversight or supervision. To the contrary, the ex-officio directors will have the sole responsibility of determining and honoring donor intent. In short, we do not believe you can lawfully transfer the Foundation's donated funds to the College without honoring donor intent, or expend donor funds from within the Foundation in a manner contrary to donor intent.

The reason, we believe, for your legal obligations is that Section 5047 of the California Corporations Code makes it irrelevant that y... is ex-officio directors on the Foundation) were never

APPENDIX B - CONTINUED

Letter of resignation, September 17, 2012, from College Marin Foundation Board to Ex-Officio Director, College of Marin Foundation, Inc.

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considered voting members of the Board (in the recollection of any current directors). Section 5047 makes it clear that you, as ex-officio directors, are indeed voting members. In short, regardless of any prior custom and practice, you are voting members and thereby have fiduciary duties to the Foundation and its donors.

Because of your independent fiduciary obligation to the Foundation's donors, it is our belief that you are now charged to complete the following actions commenced by the resigning directors:

- i. Complete the KPMG independent investigation;
- ii. Complete the financial reconciliation;
- iii. Ascertain with certainty what portions of the Foundation's funds are Restricted, true Endowment Funds, Unrestricted Funds, Board restricted funds, and administrative funds;
- iv. Complete the reconciliation of all donor charitable trust documents to ascertain with certainty each donor's intent; and
- v. Adopt policies designed to ensure that the Foundation honors the donors' intent.

The California Attorney General has been copied on this letter because the Foundation's now-resigned directors leave with serious concerns about whether the ex-officio directors will honor their fiduciary duty regarding the above, and we respectfully request that the Attorney General closely monitor the Foundation to ensure that the ex-officio directors meet their obligations to the donors' intent.

The Marin Independent Journal has been copied on this letter because of the above concerns, and to provide notice to donors to the Foundation so that they may closely monitor their donations to ensure that they are expended in accordance with their intent (i.e. scholarships and grants; not capital improvements).

We are not making any formal response to the allegations voiced in the Marin Independent Journal because the resigning directors are comfortable with the independent investigation being performed by KPMG, and that no intentional wrongdoing will be found.

While the below board members have resigned, they leave the Foundation with the tools in place to overcome well over decades' long practices by staff to insufficiently obtain and maintain documentation relating to donations and financial controls. We hope that with proper oversight from the California Attorney General, the donors, and the press, you will meet your fiduciary obligations and complete the above referenced vital tasks in a transparent manner.

Finally, we leave you with the mission statement of the Foundation: "The Mission of the College of Marin Foundation is to build community awareness in order to focus resources in support of student success at College of Marin." This mission has been met with the help and generosity of donors, and has resulted in approximately \$600,000 in annual scholarships, book grants, emergency loans, and transportation assistance. Diverting those monies toward capital improvements will do nothing to meet the immediate

APPENDIX B - CONTINUED

Letter of resignation, September 17, 2012, from College Marin Foundation Board to Ex-Officio Director, College of Marin Foundation, Inc.

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needs of the College's students. Students need help with tuition and books; new buildings and construction are not luxuries they can afford.

Very truly yours,

APPENDIX C

Foundation Board Letter regarding KPMG Findings

page 1 of 2



*Transforming Lives
Through Educational
Opportunity*

Board of Directors
Joan Bennett
President
Sidney N. Baskin
Vic Canby
Margaret E. Deedy
Ann Hill
Peggy Keon
Dennis MacDonnell
Diana Putterman
Jack Wilkinson

Consultants to the Board
David W. Coon, EdD,
*College of Marin
Superintendent/President*

Diana Conti,
*President, College of Marin
Board of Trustees*

**Honorary Consultants
to the Board**
Joan E. Capurro

P.O. Box 325
Kentfield, CA 94914
415.485.9657
415.485.1379 fax

info@collegeofmarinfoundation.org
www.comf.org

September 17, 2012

President
College of Marin
835 College Avenue
Kentfield, California 94904

Re: KPMG Interim Status Update

Dear

On September 6, 2012, KPMG provided the College of Marin Foundation with its Interim Status Update report. Pursuant to the Letter of Engagement between COMF and KPMG, the report may **not** be circulated outside of the Foundation. Nonetheless, we may provide you with a summary of the report.

The Foundation retained KPMG to conduct an internal investigation of the Foundation's assets and its concerns stemming from the resignation of Foundation personnel. On June 6, 2012, KPMG conducted an on-site visit of the Foundation's offices. Based upon this and the lack of current financial statements through May of 2012, KPMG recommended that the Foundation hire an independent consultant to construct the Foundation's financial statements with documentation in support thereof. The Foundation hired [redacted] in June of 2012. To preserve Foundation assets, KPMG's internal investigation and other procedures were halted until [redacted] completed her work.

In June of 2012, KPMG interviewed [redacted]. In July of 2012, KPMG and [redacted] Crowe & Horwath interviewed [redacted]. The interviews related to [redacted] accusations against the Foundation, as voiced in the media.

[redacted] informed KPMG and [redacted] that the Foundation had not been a victim of fraud or that its assets had been misappropriated.

APPENDIX C- CONTINUED

Foundation Board Letter regarding KPMG Findings

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Re: KPMG Interim Status Update

On August 13, 2012, KPMG and [redacted] interviewed [redacted] et.

[redacted] stated that the Foundation was not a victim of fraud or embezzlement.

In addition to the foregoing Interim Status Report, on September 14, 2012, [redacted] confirmed in writing via email that all "questionable" checks are accounted for, i.e., no checks are missing. The checks in question are for [redacted] severance pay and for [redacted]'s moving expenses.

Very truly yours,

COLLEGE OF MARIN FOUNDATION, INC.

By:  _____

[redacted], President

cc: Board of Directors, COMF
[redacted], Supervising Deputy Attorney General, California Dept. of Justice
[redacted], President, Board of Trustees
Donors to the College of Marin Foundation
Department Heads of the College of Marin
[redacted], publisher of the Marin Independent Journal
[redacted], Editor, Marin Independent Journal
[redacted], Marin Independent Journal
[redacted], e, KPMG

APPENDIX D

College Of Marin Foundation By-Laws

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BY-LAWS OF THE COLLEGE OF MARIN FOUNDATION

a California Nonprofit Public Benefit Corporation

Adopted: February 24, 2009

ARTICLE 1. NAME

SECTION 1. NAME

The name of this Corporation is the College of Marin Foundation.

ARTICLE 2. OFFICE

SECTION 1. PRINCIPAL OFFICE

The principal office of the Corporation for the transaction of its business is located in Marin County, California.

ARTICLE 3. PURPOSES

SECTION 1. OBJECTIVES AND PURPOSES

- a. The Mission of the College of Marin Foundation is to build community awareness in order to focus resources in support of student success at College of Marin. (Adopted by the Board of Directors February 22, 2005)
- b. This Corporation shall possess, enjoy and exercise all of the powers granted to it by law, and shall have power and its purpose in the pursuance of the foregoing objects shall be to solicit funds; to acquire, receive by gift, bequest, trust, or otherwise, and hold, encumber and transfer and/or sell or convey real estate and personal property; to borrow money, incur indebtedness and to secure the same by mortgage, pledge, or deed of trust of property, real or personal, to act as agent for other corporations, or persons, and to hire and employ agents and/or servants; to purchase or otherwise acquire objects of any nature whatsoever and to sell and exchange the same for the sake of acquiring other materials or property more desirable, except where prohibited or restricted by terms of the gift or trust; to conduct expeditions or explorations of scientific quest; to subsidize scientific research, to publish reports, proceedings, bulletins or thereof; and in general to do any and all things conducive to the dissemination of knowledge of the sciences and the arts, or necessary or incidental to the realization of the purposes aforementioned.
- c. The College of Marin Foundation shall operate in accordance with the Mission

APPENDIX D - CONTINUED

College Of Marin Foundation By-Laws

page 2 of 3

ARTICLE 6. MEMBERS

SECTION 1. PROVISIONS FOR MEMBERSHIP

This Corporation need not make provisions for members, however pursuant to Section 5310(6) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under the law or the provision of the Article of Incorporation or By-Laws of this Corporation, require approval by a majority of all members or approval by the members, shall only require the approval of the Board of Directors.

SECTION 2. CRITERIA FOR MEMBERSHIP

The Board of Directors, if it chooses, may create members of the Corporation. If it so decides, any person, firm, Corporation or organization in Marin County, subscribing to the objectives and purposes of these By-Laws and paying a minimum annual membership dues, as set by the Board of Directors, shall become a member of the Corporation. There may be issued to each member a certificate of membership in such form as the Directors may determine and upon which there shall be printed a statement that this Corporation is not one for profit.

ARTICLE 7. DIRECTORS - NUMBER, CHANGE OF NUMBER, POWERS, DUTIES

SECTION 1. NUMBER OF DIRECTORS

The Corporation shall have not less than nine (9) and not more than eleven (11) Directors and collectively they shall be known as the Board of Directors. In addition, there may be two (2) ex-officio members (Article 13, Section 1) of said Board of Directors as hereinafter provided.

SECTION 2. CHANGE OF NUMBER OF DIRECTORS

The Number of Directors may be changed by a Bylaw revision, duly adopted by the Board of Directors in the manner provided in the Articles of Incorporation, but no reduction of the number of Directors shall have the effect of removing any Director prior to the expiration of that Director's term of office.

SECTION 3. POWERS

Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and any limitations in the Articles of Incorporation and By-Laws relating to action required or permitted to be taken or approved by the members, if any, of this Corporation, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

APPENDIX D - CONTINUED

College Of Marin Foundation By-Laws

page 3 of 3

SECTION 2. ANNUAL MEETING

The Annual Meeting of the Corporation shall be held in June of each year. At the Annual Meeting, Officers, Directors who are eligible for re-election and new Directors not elected at a previous Regular Meeting, shall be elected. Cumulative voting for the Officers and Directors shall not be permitted. Each Director shall cast one vote for each nominee. Election shall be by majority vote.

ARTICLE 13. QUORUM

SECTION 1. QUORUM

A quorum of any meeting the Board of Directors shall be composed of one half of the number of Directors plus one (1), exclusive of ex-officio Directors. A quorum of the Executive Committee shall be three (3).

SECTION 2. MAJORITY ACTION AS BOARD ACTION

Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Articles of Incorporation or By-Laws of this Corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212), approval of contracts or transaction in which a Director has a material financial interest (Section 5233) and indemnification of Directors (Section 5238e), require a greater percentage or different voting rules for approval of a matter of the Board.

ARTICLE 14. EX-OFFICIO DIRECTORS

SECTION 1. EX-OFFICIO DIRECTORS

In addition to elected Directors, the President/Superintendent of the Marin Community College District and the President of the Board of Trustees of the Marin Community College District or his/her appointed representative may be ex-officio members of the Board of Directors of the Corporation. Except as provided above, no officer or permanent or probationary full-time employee of the Marin Community College District shall serve on the Board of Directors of this Corporation.

ARTICLE 15. HONORARY DIRECTOR

SECTION 1. CRITERIA

From time to time, at the discretion of the Board of Directors, any person whom the

APPENDIX E

College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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COLLEGE OF MARIN FOUNDATION (A NONPROFIT ORGANIZATION)	
FINANCIAL STATEMENTS June 30, 2012	
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APPENDIX E - CONTINUED

College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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COLLEGE OF MARIN FOUNDATION

Transmittal Letter

Background

Public accounting firm Crowe Horwath LLP ("Auditor") is completing its audit of College of Marin Foundation ("Foundation") financial activities for fiscal year 2011-2012, which ended on June 30, 2012. The Auditor has provided the Foundation Board of Directors ("Board") with preliminary Foundation financial results. The Board is submitting this Management Plan to the Auditor for inclusion with the audit report.

For fiscal year 2012 (July 1, 2011 through June 30, 2012) and continuing until September 17, 2012, the Board consisted of nine community members ("Community Directors") and two ex-officio members (the College President and President of the college's Board of Trustees, hereinafter referred to as the "Ex-Officio Directors").

The Foundation's bookkeeper of almost 20 years prepared monthly statements reporting on Foundation financial activities from July of 2011 through February of 2012. The Community Directors started excluding the Ex-Officio Directors from the Foundation Board's decision-making process in March of 2012. In April of 2012, the Community Directors discharged the Foundation's bookkeeper prior to his completion of financial statements for March of 2012.

The Community Directors retained accounting firm KPMG in June of 2012 to conduct an investigation. Due to a lack of current financial statements, KPMG recommended that the Community Directors hire a consultant to prepare financial statements and supporting documentation. The Community Directors hired a consultant to perform this work starting in June of 2012; however, the Community Directors continued to incur expenses from March through June of 2012 despite the fact that they were operating without financial statements. As of June 30, 2012, the Community Directors had spent all unrestricted funds available to pay for Foundation operations. In addition, they had improperly spent \$329,094 of restricted funds on operating expenses.

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Kentfield, CA 94914
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info@collegeofmarinfoundation.org
www.comf.org

APPENDIX E - CONTINUED***College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.***

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The Community Directors resigned from the Board on September 17, 2012. This left only the Ex-Officio Directors on the Board. The accountant retained by the Community Directors had not completed or provided financial statements to the Board by the time the Community Directors resigned. Despite lacking financial statements, the Community Directors continued to incur significant unbudgeted expenses from July 1, 2011 until their resignation. When the Community Directors resigned on September 17, 2012, their continued deficit spending on operations had resulted in a total incursion on restricted funds of approximately \$464,000.

After the Community Directors resigned, the Ex-Officio Directors undertook efforts to determine the Foundation's financial status. The accountant retained by the Community Directors thereafter completed financial statements for March of 2012 through June of 2012. She provided them to the Ex-Officio Directors in December 2012. Crowe Horwath was unable to complete the Foundation's portion of the district's fiscal year 2011-2012 audit until the Foundation provided these reports.

In addition, the Ex-Officio Directors arranged for district personnel under the supervision of the vice president of college operations to retroactively construct financial statements for the months of July of 2012 through December of 2012. Based on those financial statements, the office of the vice president for operations prepared an unaudited analysis and report on the Foundation's financial activities for the period ending December 31, 2012.

A copy of this unaudited Foundation financial report as of December 31, 2012, is attached below:

		2012					
ASSETS			Unrestricted	Temporarily Restricted	Permanently Restricted	Total	
Cash		\$ (215)					
Investments		3,862,974					
Receivables		1,350					
Prepaid expenses		1,628					
Depreciable capital assets, net		4,049					
Total assets		<u>\$ 3,869,785</u>					
LIABILITIES							
Accountants payable and accrued liabilities		\$ 29,317					
Grants payable		2,800					
Total liabilities		<u>32,117</u>					
NET ASSETS							
Net assets:							
Unrestricted		(464,464)					
Temporarily restricted		4,106,668					
permanently restricted		195,464					
Total net assets		<u>3,837,668</u>					
Total liabilities and net assets:		<u>\$ 3,869,785</u>					
			Contributions	\$ 1,514	\$ 47,262	\$ -	\$ 48,776
			Investment (expense) income	78	208,713	-	208,793
			Other operating income	354	567	-	921
			Operating transfers	-	-	-	-
			Net assets released from restriction	90,236	(90,236)	-	-
			Total revenues	92,274	167,306	-	259,580
			Expenses:				
			Grants and related activities	90,236	-	-	90,236
			Salaries and benefits	35,328	-	-	35,328
			Fundraising expense	-	-	-	-
			Professional services	95,335	-	-	95,335
			Operating expenses	6,846	-	-	6,846
			Other transfers	-	-	-	-
			Total expenses	227,544	-	-	227,544
			Increase in net assets	(135,170)	167,306	-	31,336
			Net assets, July 1, 2012	<u>(329,894)</u>	<u>3,938,962</u>	<u>195,464</u>	<u>3,805,732</u>
			Net assets, December 31, 2012	<u>\$ (464,464)</u>	<u>\$ 4,106,668</u>	<u>\$ 195,464</u>	<u>\$ 3,837,668</u>

APPENDIX E - CONTINUED***College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.***

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Between July 1, 2011 and December 31, 2012, the Foundation held all of its assets in a single pool for investment and expenditure purposes. The total amount of financial assets held by the Foundation as of December 31, 2012, was \$3,869,785.

The Foundation held and managed three categories of assets during the period of July 1, 2011 through December 31, 2012. The total amount of those three categories as of December 31, 2012, should have been \$4,302,132 allocated as follows:

1. Charitable funds donated to the Foundation as restricted endowments. Expenditure of those funds was restricted to the purposes for which the funds were given, which included scholarships and support for specific programs. Ending balance: \$3,855,886*
2. Grant funding restricted to the purposes specified in the grant. Ending balance: \$115,688*
3. Annual funds and program funds held on behalf of various campus departments, programs and initiatives. Expenditure of those funds was restricted to spending for the specified department, program or initiative. Ending balance: \$330,558*

<u>Classification</u>	<u>Balance</u>	<u>Foundation Categories</u>	<u>Balance</u>
Temporarily Restricted Net Assets	\$ 4,106,668	1. Charitable Restricted Endowments	\$ 3,855,886
Permanently Restricted Net Assets	195,464	2. Grant Funds	115,688
		3. Program Funds	330,558
Total	\$ 4,302,132	Total	\$ 4,302,132

*The source of these figures is the unaudited financial records of the College of Marin Foundation as of December 31, 2012.



However, the Community Directors improperly spent an amount approximately equal to the restricted grant and program funds totaling \$464,464 on accounting, legal, general consultants and contractors, temporary employees, offsite lease, moving costs, bank charges and other miscellaneous expenses. At the time the Community Directors resigned, there were no remaining funds available to continue normal Foundation operations. Accordingly, the Ex-Officio Directors suspended all normal Foundation operations.

Despite the improper spending noted above, 142 scholarships were awarded to students in the amount of \$67,420 at the annual scholarship awards ceremony in May 2012. The annual scholarship program will proceed as in years past in May 2013.

APPENDIX E - CONTINUED

College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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	Crowe Horwath.	<small>Crowe Horwath LLP Independent Member Crowe Horwath International</small>
 REPORT OF INDEPENDENT AUDITORS		
 Board of Directors College of Marin Foundation Marin, California		
<p>We have audited the accompanying statement of financial position in liquidation of College of Marin Foundation (the "Foundation") as of June 30, 2012, and the related statements of activities and cash flows in liquidation for the year then ended. These financial statements are the responsibility of the Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audit.</p>		
<p>We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.</p>		
<p>As described in Note 5 to the financial statements, management of College of Marin Foundation approved a plan of liquidation, and the Foundation is in process of commenced liquidation. As a result the Foundation has changed its basis of accounting from the going concern basis to a liquidation basis.</p>		
<p>In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position in liquidation of College of Marin Foundation as of June 30, 2012 and the change in net assets and its cash flows in liquidation for the year then ended, in conformity with accounting principles generally accepted in the United States of America.</p>		
<div style="text-align: right;"> Crowe Horwath LLP</div>		
<div>Sacramento, California March 28, 2013</div>		
<hr/>		
<div style="text-align: right;">1.</div>		

APPENDIX E - CONTINUED

College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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COLLEGE OF MARIN FOUNDATION (A NONPROFIT ORGANIZATION) STATEMENT OF FINANCIAL POSITION IN LIQUIDATION June 30, 2012	
ASSETS	
Current assets:	
Cash and cash equivalents (Note 2)	\$ 309,444
Investments (Note 2)	3,654,237
Receivables	1,350
Prepaid expenses	1,628
Depreciable capital assets, net	<u>4,048</u>
Total assets	<u>\$ 3,970,707</u>
LIABILITIES AND NET ASSETS	
Current liabilities:	
Accounts payable and accrued expenses	\$ 158,650
Grants payable	<u>6,325</u>
Total liabilities	<u>164,975</u>
Net assets:	
Unrestricted	(329,094)
Temporarily restricted	3,939,362
Permanently restricted	<u>195,464</u>
Total net assets	<u>3,805,732</u>
Total liabilities and net assets	<u>\$ 3,970,707</u>
See accompanying notes to financial statements.	
2.	

APPENDIX E - CONTINUED**College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.**

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COLLEGE OF MARIN FOUNDATION (A NONPROFIT ORGANIZATION) STATEMENT OF ACTIVITIES IN LIQUIDATION For the Year Ended June 30, 2012				
	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Revenues, gains and other support:				
Contributions	\$ 33,899	\$ 348,868	\$ 1,683	\$ 384,450
Investment (expense) income	(10,310)	30,172	-	69,862
Other operating income	100	59,063	-	59,163
Net assets released from restrictions	857,828	(857,828)	-	-
Total revenues	881,517	(369,725)	1,683	513,475
Expenses:				
Grants and related activities	455,854	-	-	455,854
Salaries and benefits	202,435	-	-	202,435
Fundraising expense	70,843	-	-	70,843
Professional services	403,362	-	-	403,362
Operating expenses	35,019	-	-	35,019
Other transfers	49,014	-	-	49,014
Total expenses	1,216,527	-	-	1,216,527
Decrease in net assets	(335,010)	(369,725)	1,683	(703,052)
Net assets, July 1, 2011	5,916	4,309,087	193,781	4,508,784
Net assets, June 30, 2012	\$ (329,094)	\$ 3,939,362	\$ 195,464	\$ 3,805,732
See accompanying notes to financial statements.				

APPENDIX E - CONTINUED***College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.***

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COLLEGE OF MARIN FOUNDATION (A NONPROFIT ORGANIZATION) STATEMENT OF CASH FLOWS IN LIQUIDATION For the Year Ended June 30, 2012	
Cash flows from operating activities:	
Donations received from contributions and other revenues	\$ 440,425
Payments to employees	(202,435)
Payments to suppliers for goods and services	(367,839)
Payments to/on behalf of students	(325,910)
Other receipts and payments	(231,878)
Net cash used in operating activities	(687,637)
Cash flows from investing activities:	
Purchase of investments	(82,858)
Proceeds from sales and maturities of investments	485,070
Purchase of depreciable capital assets	(4,048)
Net cash provided by investing activities	398,164
Cash flows from financing activities:	
Contributions restricted for long-term investment	1,683
Net decrease in cash and cash equivalents	(287,790)
Cash and cash equivalents, July 1, 2011	597,234
Cash and cash equivalents, June 30, 2012	\$ 309,444
Reconciliation of change in net assets to cash (used in) operating activities:	
Change in net assets	\$ (703,052)
Change in value of investments	25,019
Interest and dividends	(93,293)
Investment management fees	(1,588)
Contributions restricted for long term investments	(1,683)
Change in assets and liabilities:	
Receivables	(750)
Prepaid expenses	(142)
Accounts payable and accrued expenses	141,527
Grant payable	(53,675)
Net cash used in operating activities	\$ (687,637)
See accompanying notes to financial statements.	

APPENDIX E - CONTINUED

College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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COLLEGE OF MARIN FOUNDATION
(A NONPROFIT ORGANIZATION)
NOTES TO FINANCIAL STATEMENTS
June 30, 2012

NOTE 1 – SUMMARY OF SIGNIFICANT POLICIES

Organization: College of Marin Foundation (the "Foundation") is a nonprofit, tax-exempt organization. The purpose of the Foundation is to provide supportive services and specialized programs for the general benefit of the Marin Community College District (the "District") and the District's various organizations.

Basis of Accounting: The accompanying financial statements are prepared on the liquidation basis of accounting during the process of liquidation. Assets held by the Foundation are liquid and stated at their current fair value. Other assets held by the Foundation not revalued for liquidation are not significant to the Foundation's financial position.

Basis of Presentation: In accordance with Codification Topic 958, net assets are classified on the Statement of Financial Position as unrestricted, temporarily restricted, or permanently restricted net assets based on the absence or existence and type of donor-imposed restrictions.

The Foundation's net assets are classified as follows:

Unrestricted: Net assets not subject to donor-imposed stipulations.

Temporarily restricted: Net assets subject to donor-imposed stipulations that will be met either by actions of the Foundation and/or passage of time.

Permanently restricted: Net assets subject to donor-imposed stipulations that require that they be maintained permanently by the Foundation. Generally, the donors of these assets permit the Foundation to use all or part of the income earned on related investments for general or specific purposes.

Expenditures are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulation or by law. Expirations of temporary restriction on net assets (i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed) are reported as net assets released from restrictions.

Cash and Cash Equivalents: The Foundation considers cash in operating bank accounts, money market accounts, certificates of deposits, and all unrestricted highly liquid investments with an initial maturity of three months or less to be cash and cash equivalents. At times, cash balances may exceed federally insured limits.

Investments: The Foundation records investments in marketable securities with readily determinable fair values and all investments in debt securities at their fair values. Unrealized gains and losses are reported in the statement of activities.

Property and Equipment: Purchases are recorded at cost; donated items of property and equipment used in operations are recorded at their estimated fair value at the date of donation. If donors stipulate how long the assets must be used, the contributions are recorded as restricted support. In the absence of such stipulations, contributions of property and equipment are recorded as unrestricted support. The Foundation's policy is to capitalize property and equipment greater than \$500.

Depreciation and Amortization: Fixed assets are depreciated using the straight-line method over 5 – 39 years, depending on asset types.

(Continued)

5.

APPENDIX E - CONTINUED

College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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COLLEGE OF MARIN FOUNDATION
(A NONPROFIT ORGANIZATION)
NOTES TO FINANCIAL STATEMENTS
June 30, 2012

NOTE 1 – SUMMARY OF SIGNIFICANT POLICIES (Continued)

Restricted and Unrestricted Revenue and Support: Contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support, depending on the existence and/or nature of any donor restrictions. Support that is restricted by the donor is reported as an increase in temporarily or permanently restricted net assets, depending on the nature of the restriction.

Net Assets: The Foundation accounts for its endowments in accordance with *Endowments of Not-for-Profit Organizations: Net Asset Classification of Funds Subject to and Enacted Version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA), and Enhanced Disclosures for All Endowment Funds* (Codification Topic 958-205). The Foundation's endowment currently consist of one individual fund established for the purpose of supporting education at the District. The endowment include donor-restricted endowment funds. Net assets associated with endowment funds, are classified and reported based on the existence or absence of donor-imposed restrictions.

The Board of Directors of the Foundation has interpreted UPMIFA as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Foundation classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, (b) the original value of subsequent gifts to the permanent endowment, and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund. The remaining portion of the donor-restricted endowment fund that is not classified in permanently restricted net assets is classified as temporarily restricted net assets until those amounts are appropriated for expenditure by the organization in a manner consistent with the standard prudence prescribed by UPMIFA.

The Foundation follows the Foundation's adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs supported by its endowment while seeking to maintain purchasing power of the endowment assets. Endowment assets include those assets of donor-restricted funds that the Foundation must hold in perpetuity or for a donor-specific period(s).

The investment objective is to optimize earnings on all invested funds, while maintaining the preservation of capital. Risk will be minimized by investing in high quality fixed income and equity instruments with the objective of maintaining a balanced portfolio in accordance with the Foundation's investment policy.

Use of Estimates: The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Impairment of Long-Lived Assets: The Foundation evaluates long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Upon such an occurrence, recoverability of assets to be held and used is measured by comparing the carrying amount of an asset to forecasted undiscounted future net cash flows expected to be generated by the asset. If the carrying amount exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Once an impairment charge is recorded, the carrying amount cannot be increased. There was no impairment recorded for the years ended June 30, 2012 and 2011.

(Continued)

6.

APPENDIX E - CONTINUED

College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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COLLEGE OF MARIN FOUNDATION
(A NONPROFIT ORGANIZATION)
NOTES TO FINANCIAL STATEMENTS
June 30, 2012

NOTE 1 – SUMMARY OF SIGNIFICANT POLICIES (Continued)

Contributions: Contributions are recognized as revenues in the period received. Unconditional promises to give (pledges) are recognized as revenue when commitment is communicated to the Foundation. Conditional promises to give are not recognized until they become unconditional, that is, when the conditions on which they depend are substantially met. Contributions of assets other than cash are recorded at their estimated fair value at the date of donation. Contributions are considered available for unrestricted use unless specifically restricted by the donor.

Tax Status: The Foundation has been granted tax-exempt status by the Internal Revenue Service pursuant to code section 501(c)(3) and also by the California revenue and tax code section 23701a.

The Foundation has accounted for uncertainty in income taxes as required by the *Accounting for Uncertainty in Income Taxes* Topic of the Financial Accounting Standards Board (FASB) Accounting Standards Codification. The Foundation uses a comprehensive model for recognizing, measuring, presenting and disclosing in the financial statements tax positions taken or expected to be taken on a tax return. A tax position is recognized as a benefit only if it is "more likely than not" that the tax position would be sustained in a tax examination, with a tax examination being presumed to occur. The amount recognized is the largest amount of tax benefit that is greater than 50% likely of being realized on examination. For tax positions not meeting the "more likely than not" test, no tax benefit is recorded. The effect of applying this model and the resulting identification of uncertain tax positions, if any, were not considered significant for financial reporting purposes. The Foundation is not subject to any tax liability. Management does not expect the total amount of unrecognized tax benefits to significantly change in the next 12 months. Interest and penalties on tax assessments are classified as an expense when incurred.

The Foundation would recognize any interest and penalties related to unrecognized tax benefits in tax expense. During the year ended June 30, 2012, the Foundation did not recognize any interest or penalties. The Foundation is subject to the filing of U.S. Federal and California informational returns. Federal returns for 2009 through 2011 and California returns for 2008 through 2011 are currently open for potential Federal and State examination.

NOTE 2 – CASH AND INVESTMENTS

The Foundation limits custodial credit risk by ensuring uninsured balances are collateralized by the respective financial institution. Under Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, interest-bearing cash balances held in banks are insured up to \$250,000 and noninterest-bearing cash balances held in banks are fully insured by the Federal Deposit Insurance Corporation (FDIC) and are collateralized by the respective financial institution. At June 30, 2012, the carrying amount of the Foundation's cash on hand and in banks was \$309,444 and the bank balance was \$347,711. The bank balance amount insured by the FDIC was \$347,711.

(Continued)

7.

APPENDIX E - CONTINUED***College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.***

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COLLEGE OF MARIN FOUNDATION
(A NONPROFIT ORGANIZATION)
NOTES TO FINANCIAL STATEMENTS
June 30, 2012

NOTE 2 – CASH AND INVESTMENTS (Continued)**Foundation Investments**

The following presents information about the Foundation's assets measured at fair value on a recurring basis as of June 30, 2012, and indicates the fair value hierarchy of the valuation techniques utilized by the Foundation to determine such fair value based on the hierarchy:

Level 1 – Quoted market prices or identical instruments traded in active exchange markets.

Level 2 – Significant other observable inputs such as quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable or can be corroborated by observable market data.

Level 3 – Significant unobservable inputs that reflect a reporting entity's own assumptions about the methods that market participants would use in pricing an asset or liability.

The Foundation is required or permitted to record the following assets at fair value on a recurring basis:

Description	Fair Value	Level 1	Level 2	Level 3
Mutual Fund	\$ 3,654,237	\$ 3,654,237	\$ -	\$ -

There were no changes in the valuation techniques used during the year ended June 30, 2012.

The Foundation had no non recurring assets and liabilities at June 30, 2012, which were required to be disclosed using the fair value hierarchy.

NOTE 3 - ENDOWMENT NET ASSETS - FOUNDATION

Changes in endowment net assets for the fiscal year ended June 30, 2012, consisted of the following:

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Endowment net assets, beginning of year	\$ -	\$ 11,419	\$ 193,781	\$ 205,200
Investment income	-	4,083	-	4,083
Change in fair value of investments	-	(4,581)	-	(4,581)
Contributions	-	-	1,683	1,683
Appropriation of endowment assets for expenditure	-	(9,333)	-	(9,333)
Endowment net assets, end of year	\$ -	\$ 1,588	\$ 195,464	\$ 197,052

(Continued)

8.

APPENDIX E - CONTINUED***College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.***

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COLLEGE OF MARIN FOUNDATION
(A NONPROFIT ORGANIZATION)
NOTES TO FINANCIAL STATEMENTS
June 30, 2012

NOTE 3 - ENDOWMENT NET ASSETS – FOUNDATION (Continued)

Endowment net asset composition by type of fund for the fiscal year ended June 30, 2012, consisted of the following:

	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Donor restricted endowment funds	\$ -	\$ 1,588	\$ 195,464	\$ 197,052
Board-designated endowment Funds	-	-	-	-
Endowment net assets, end of year	<u>\$ -</u>	<u>\$ 1,588</u>	<u>\$ 195,464</u>	<u>\$ 197,052</u>

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the level that the donor of UPMIFA requires the Foundation to retain as a fund of perpetual duration. There were no individual endowment funds with such deficiencies as of June 30, 2012.

NOTE 4 – USE OF DONOR RESTRICTED ASSETS

The Foundation has utilized certain donor-restricted assets amounting to \$329,094, for ongoing operations. The amount of certain donor-restricted net assets used for ongoing operations totaled \$464,464 at December 31, 2012. These donor-restricted funds are required to be reestablished by the Foundation or the donor must approve the removal of the restriction. At June 30, 2012, the Foundation had not received the approval to remove certain restrictions from donors.

NOTE 5 – FUNCTIONAL EXPENSES

Certain costs were allocated among services categories based on resource usage for reporting functional expenses. For 2012, management estimates that approximately 47% of functional expenses related to program services and 53% relate to supporting services.

NOTE 6 – MANAGEMENT'S PLAN OF LIQUIDATION

Management has developed a plan to liquidate the Foundation. The Ex-Officio Directors' plan is to protect the remaining restricted funds to ensure that they will be spent, to the degree possible, on their intended, restricted purposes. The Ex-Officio Directors will act in consultation with and as may be directed by the office of the Attorney General as follows:

- Report on the Foundation's financial status in a meeting with interested parties including donors and grantors.
- Contact Attorney General's Office through legal counsel and provide all information pertinent to the Attorney General's oversight role for California non-profit public benefit corporations.
- Consult with the office of the Attorney General to identify any potential legal recourse to address alleged mismanagement of Foundation funds.

(Continued)

APPENDIX E - CONTINUED


College of Marin Foundation Transmittal letter and Audited Financial Statements for Fiscal Year Ending June 30, 2012- including notes by auditors and Unaudited Financial Statements from July 1, 2012 through December 31, 2012.

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COLLEGE OF MARIN FOUNDATION (A NONPROFIT ORGANIZATION) NOTES TO FINANCIAL STATEMENTS June 30, 2012	
NOTE 6 – MANAGEMENT’S PLAN OF LIQUIDATION (Continued)	
<ul style="list-style-type: none">• Seek assistance from the District’s Board of Trustees to make up the deficit in grant funding necessary to fulfill the terms of the grants.• Develop short and long term plans in consultation with the District’s Board of Trustees to mitigate potential consequences to district programs due to the loss of program funds held in trust by the Foundation.• Identify potential methods of repaying restricted funds that have been used for operational expenses.• Close depleted program accounts and permanently discontinue the Foundation’s custodial and management role of those accounts.• The District will assume responsibility for future fund raising for college programs, establishing new program accounts and assume all management and accounting responsibilities.• Explore options with the Attorney General’s office for management of funds held by the Foundation with consideration to transfer of the assets to an appropriate entity and the possibility of dissolving and winding up the Foundation as a non-profit public benefit corporation.	
NOTE 7 – SUBSEQUENT EVENTS	
The Foundation has reviewed all events occurring from June 30, 2012 through March 28, 2013, the date the financial statements were available to be issued. No subsequent events occurred requiring accrual or disclosure.	
10.	


APPENDIX F**(DRAFT) List of Restricted Funds**

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<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  </div> <div> College of Marin Foundation Restricted Funds For the Period Ending December 31, 2012 </div> </div>							
Fund#	Fund Name	Beginning Balance	Contributions	Fee For Service	Administrative Fees 5%	Program Support	Scholarships Ending (Expenses) Balance
R105	AB 54	898.33					898.33
R109	Adair, Carol Scholarship	712.50					712.50
R110	Adaptive PE	194.75					194.75
R112	Adopt a Fossil Fund	2,925.11					2,925.11
R115A	AGS Fundraising	(1,987.79)					(1,987.79)
R118	Alcance Fund	435.42					435.42
R122	Alpha Delta Kappa	22.50					22.50
R123	American Pen Women Art School	1,425.00					1,425.00
R128	Aquatics	5,496.54					5,496.54
R133	Art Department	71.19					71.19
R134	Art Gallery	1,275.41					1,275.41
R135	Art History Fund	1,962.00					1,962.00
R137	ASCOM Book Grants	6,926.13					6,926.13
R138	ASCOM Leadership	1,113.33					1,113.33
R139	ASCOM Battle of the Bands	-					-
R140	ASEC Fund	152.67					152.67
R150	ASIVC Scholarship	-					-
R155	Athletic Booster Club	4,895.90					4,895.90
R157**	Athletic Training	-					-
R160	Automotive	675.00					675.00
R170	Band	534.89	75.00			(315.24)	294.65
R173	Baseball	7,908.75	3,975.00	175.00		(773.39)	11,285.36
R180	Biology/Geology Program	372.55					372.55
R185	Fraser, Margot	5,952.50					5,952.50
R195A	Bregante Library	1,142.50					1,142.50
R200	CCC/Osher Fund	800.00					800.00
R212**	Cabaret	-					-
R214**	Carla Smith-Zilber	-					-
R215	Carla Zilbersmith Scholarship	2.85					2.85
R220	Chamber Music	3,527.51					3,527.51
R225	Chan Redwood Grove	6,650.00					6,650.00
R235	Chemistry Program	642.26					642.26
R240	Chi Omega Scholarship	1,687.50					1,687.50
R248	Children's Center Garden	600.95					600.95
R250	Children's Center IVC	1,201.50					1,201.50
R251	Children's Center Kentfield	1,006.82				(90.00)	916.82
R255	Children's Center Staff	-					-
R260	CIS Computer Club	4,349.77					4,349.77
R262A**	Classified Senate	2,365.67	418.80				2,784.47
R264	Claxton, Roy Student Aid	1,105.00					1,105.00
R270	Community Chorus/Stan Kazak	2,103.72					2,103.72
R282	Court Reporting	142.50					142.50
R290	Cup Memorial	500.00					500.00
R305	Dance Program	3,232.94	10.00				3,242.94
R307A	DaSilva Biology	43.05					43.05
R310A	Dawe, Richard Memorial	819.38					819.38
R315A	de Benedictus Memorial	200.00					200.00
R320	Dental Assist Program Fund	2,563.04					2,563.04
R325	Dental Assist Vaccine/Exam	70.90					70.90
R330	Devon Scholarship	2.50					2.50
R342	Dipsea Race Foundation	74.00					74.00
R350	Disable Students	615.75					615.75
R355	Drama Campaign	950.00					950.00
R360	Drama Program	1,397.13					1,397.13
R363	Drama Student Fellowship	147.33					147.33
R370	E S L	1,801.87					1,801.87
R380	Early Childhood Education	10,332.46					10,332.46
R390	ECE Learning Community	25,531.95					25,531.95
R393**	Elliott Fund	(150.00)					(150.00)
R395	Engineering/Phys Science School	-					-
R400A	EOPS Program Fund	88.20	10.00				98.20

APPENDIX F - CONTINUED**(DRAFT) List of Restricted Funds**

page 2 of 3

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  <p>DRAFT</p> </div> <div> <p>College of Marin Foundation Restricted Funds For the Period Ending December 31, 2012</p> </div> </div>							
Fund#	Fund Name	Beginning Balance	Contributions	Fee For Service	Administrative Program Fees 5% Support	Scholarships Ending (Expenses)	Balance
R402	EOPS Tutoring	9.50					9.50
R405	Farm IVC	950.00					950.00
R410	Fearnley Dance Scholarship	665.00					665.00
R413	Ferrandini, Suzanne	785.00					785.00
R415	Film Program	3,923.98					3,923.98
R420	Foreign Student	190.00					190.00
R423A	Foster Parent Dana	235.00					235.00
R430	Frick Memorial Music	7,620.33	10.00				7,630.33
R435	Friend of the Gallery	151.40					151.40
R445	Gay & Lesbian Scholarship	580.50					580.50
R455	Gilardi, Steven	-					-
R456	Gilbert, Artie	86.50					86.50
R458	Gillin, John	1,591.25					1,591.25
R464	Ground Maintenance	237.50					237.50
R470	Hall, Wallace Memorial	1,260.00					1,260.00
R478	Health Center/ Student Lab	636.75					636.75
R485	Hershon Family Scholarship	417.50					417.50
R490	Horsley	1,418.25					1,418.25
R522	Infant/Toddler Center	243.98					243.98
R524	Instrument Rental	1,048.23	75.00				1,123.23
R528A	Italian II Cenacolo	500.00					500.00
R530	Italian Program	1,045.00					1,045.00
R550	Jewelry Fund	34.46					34.46
R562	Keyboard Fund	179.50					179.50
R564**	Denise Kirchner	-					-
R565	Kipp, Maurice	47.50					47.50
R580	Launer, Carol Art Scholarship	(85.00)					(85.00)
R583	League of Women Voters	(5,141.25)					(5,141.25)
R586	Lenarz, William Biology	1,511.92					1,511.92
R602	Life & Earth Science Scholarship	6,937.76	10.00				6,947.76
R615	Litz Fund	209.26					209.26
R625	Machine Technology	2,509.77					2,509.77
R630	M R T A Scholarship	7,092.50					7,092.50
R633	Maintenance	95.00					95.00
R634	Marin Mineral Society	-					-
R635	Marine Lab Bolinas	722.60					722.60
R642	Math Tutorship	2,228.00					2,228.00
R650	McCarron Jazz	23.50					23.50
R654	MCF/ESL	55,240.45 *					55,240.45
R657	Meacham, Charles Strings	6,995.80					6,995.80
R660**	MEF Childcare	33,714.78 *					33,714.78
R661	MEF/IEP	269.57					269.57
R663	Men's Basketball	2,812.80			(2,537.58)		275.22
R672	Mirdadian, Behrauz Arts Achievemei	-					-
R676	Model UN	190.00					190.00
R680	Music Program	5,099.90					5,099.90
R683	Music Proj-Sudmeier/Mitchell	475.00					475.00
R688	Niebauer, John	3,202.48					3,202.48
R689	No Smoking Signage	190.00					190.00
R690	Nunez, Server Nursing	380.00					380.00
R693	Nursing Emergency Fund	422.00					422.00
R710	Orchestra	4,577.40	575.00				5,152.40
R718	Painting Class KR	296.75					296.75
R720	Parent Services- IVC	138.22					138.22
R721	Parent Services- Kentfield	-					-
R725A	Parnell Fund	1,270.22					1,270.22
R731	PE Softball	589.72		132.00			721.72
R732	PE Summer Sports	7,049.32					7,049.32
R733	PE Summer Camps	4,051.25			(1,800.00)		2,251.25
R734	PE Volleyball	2,586.37					2,586.37
R740	Performing Arts	4,655.48					4,655.48

APPENDIX F - CONTINUED**(DRAFT) List of Restricted Funds**

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DRAFT		College of Marin Foundation Restricted Funds For the Period Ending December 31, 2012					
Fund#	Fund Name	Beginning Balance	Contributions	Fee For Service	Administrative Fees 5%	Program Support	Scholarships Ending (Expenses) Balance
R745	Peterson, Murray	545.00					545.00
R752	Piano Scholarship	637.43					637.43
R767	Program Enhancement	1,276.23					1,276.23
R770	RK Student Fund	4,310.57					4,310.57
R773	Rathmann	1,009.72					1,009.72
R775	Rausch, Robert	11,875.00					11,875.00
R778	Redwood High Scholarship	1,323.65					1,323.65
R780	Redwood Wind Quartet	1,416.63				(900.00)	516.63
R782	Reentry Book Grants	162.36					162.36
R790**	Rotary of Ross Valley	-					-
R792	Ruiz, Manuel	28.61					28.61
R802	San Andreas	830.72					830.72
R815	Saunders, Jack Memorial Scholarsh	500.00					500.00
R816	Saunders Stage Crew	2,450.98					2,450.98
R830	Science Center Computing	71.25					71.25
R832	Science Museum	3,320.50					3,320.50
R835	Sculpture Program	148.42					148.42
R840**	Sim, Cathy	252.50					252.50
R842	Simulation Lab	59,122.79					59,122.79
R845	Skaer, Helena Memorial	500.00					500.00
R852	Smithton	(50.00)					(50.00)
R860	Modern Languages	725.25					725.25
R875	Stage Crew	3,161.87					3,161.87
R878	Strings Fund	2,367.35					2,367.35
R880	Stroke Support	413.25					413.25
R885A	Student Nurses Association	1,273.75					1,273.75
R886	Student Nursing Assistance	33,250.00					33,250.00
R900**	Swift	-					-
R905	Tiburon Music Festival	273.71					273.71
R908	Tobin, Joanne Marie	1,045.00					1,045.00
R915	Track & Field	1,084.99					1,084.99
R925	Turner, Eva Ethnic Students	4,924.25	25.00				4,949.25
R930	Turner, Sekou	-					-
R945	Unity Festival	381.26					381.26
R950	UPM	37.00					37.00
R955	Vega	684.00					684.00
R956	Veterans Program	(98.79)					(98.79)
R960	Weil, Randy	821.04					821.04
R973A	Williams, Don	560.00					560.00
R975	Williams, Robin Scholarship	1,383.00					1,383.00
R980	Women's Basketball	3,307.09	700.00			(1,060.80)	2,946.29
R993	College For All Program	11,663.99				(1,139.06)	10,524.93
Totals		448,670.80	5,883.80	307.00	-	(8,616.07)	446,245.53

APPENDIX G

(DRAFT) *List of Endowments and Program Endowments*

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College of Marin Foundation Individual Endowment Funds For the Period Ending December 31, 2012									
Fund#	Fund Name	Beginning Balance	Transfers Misc Inc.**	Investment Income	Contributions	Expenses	Administrative Fees	Scholarships	Ending Balance
E1000	General	1,044,729.97	4,523.09	41,162.48					1,090,415.54
E2005	Adair	16,449.41							16,449.41
E2010	Alumni Assoc.Scholar	5,099.46							5,099.46
E2022	Applegate, Helen S.R.	3,923.92							3,923.92
E2041	Allensby	(18.06)							(18.06)
E2050	Ball, Kevin L	7,948.68							7,948.68
E2060	Bavosa, Dan	1,588.29							1,588.29
E2080	Bruckman, Robert L	4,527.51							4,527.51
E2120	Burke Sisters	20,285.47							20,285.47
E2130	Business&Prof. Women	2,498.16							2,498.16
E2135	Cadogan, Edwin	14,510.67							14,510.67
E2138	Carnessale	6,217.53							6,217.53
E2142	Cello, Armand	252,156.40							252,156.40
E2150	Chan, Gordon	5,986.25							5,986.25
E2165	Compton, Frances	14,959.67							14,959.67
E2190	Cutler, Marge	5,241.83							5,241.83
E2195	Cancilla	35,740.13							35,740.13
E2200	Carolyn DeBorba	111,477.40							111,477.40
E2210	Cortright	46,680.17							46,680.17
E2221	Deedy, Elizabeth&Daniel	105,029.78							105,029.78
E2230	Dennin, Joy Goldstone	3,138.51							3,138.51
E2245	Dessauer, Louis W	278.49							278.49
E2246	Diluzio	18,677.49							18,677.49
E2247	Dirks, Carolyn	88,854.98							88,854.98
E2249	Doglione, Susan	(149.68)							(149.68)
E2250	Dukes, David	6,440.18							6,440.18
E2258	Fearnley Dance	(71.69)							(71.69)
E2260	Federated Indians of Graton	18,187.55							18,187.55
E2270	Gillespie Endowment	9,710.63							9,710.63
E2300	Gillin, John	13,421.75							13,421.75
E2350	Gartman, Judith	25,401.88							25,401.88
E2353	Gastonguay	2,807.84							2,807.84
E2360	Getz	(118.81)							(118.81)
					5.00				

APPENDIX G - CONTINUED**(DRAFT) List of Endowments and Program Endowments**

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College of Marin Foundation
Individual Endowment Funds
For the Period Ending December 31, 2012

Fund#	Fund Name	Beginning Balance	Transfers Misc Inc.**	Investment Income	Contributions	Expenses	Administrative Fees	Scholarships	Ending Balance
E2365	Gomez	32,770.76							32,770.76
E2367	Gordon Baseball	8,775.11							8,775.11
E2370	Greene, Margaret	9,730.05							9,730.05
E2373	Griffin	5,980.51							5,980.51
E2380	Hall, E&W	3,780.79							3,780.79
E2385	Hamilton, Clara-Bell	57,780.79							57,780.79
E2400	Hendricks, Roberta	13,166.50							13,166.50
E2410	Hensler, Dr. Harry N.	4,972.04							4,972.04
E2425	Independent Ins. Agents	5,356.12							5,356.12
E2458	Kaiser Permanente	6,548.36							6,548.36
E2480	Krohn, Emma	39,235.37							39,235.37
E2500	Langhart, R. Walter	3,692.00							3,692.00
E2520	Lazar, Michael	3,555.94							3,555.94
E2530	Library Endowment	6,516.83							6,516.83
E2533	Lindemann	25,467.81							25,467.81
E2540	Mack, Aaron E	21,235.85							21,235.85
E2550	Mackey, John W	32,933.35							32,933.35
E2554	McDill, John	2,183.20							2,183.20
E2555	McLeran, Charles E & Alda	20,074.35							20,074.35
E2560	McLeran Loan Fund	3,633.90							3,633.90
E2570	Miller, Gerald	4,531.30							4,531.30
E2580	Mirdadian	10,893.21							10,893.21
E2590	Moseley, Erika L	12,466.61							12,466.61
E2610	Mumford, Iris	41,780.89							30,957.39
E2650	New Marin Scholars	(29,521.76)				(10,823.50)			(29,521.76)
E2732	RN	50,221.63							50,221.63
E2737	Reese, Betty	11,381.02							11,381.02
E2739	Reese, Mai	4,303.03							4,303.03
E2750	Robinson, Leona E	8,337.46							8,337.46
E2790	Seymour, Kent	1,403.89							1,403.89
E2800	Shaw, Rick	4,701.08							4,701.08
E2810	Shiner, Rachel	3,609.09							3,609.09
E2820	Signorelli Memorial Fund	14,601.24							14,601.24

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APPENDIX G - CONTINUED**(DRAFT) List of Endowments and Program Endowments**

page 3 of 3


College of Marin Foundation Individual Endowment Funds For the Period Ending December 31, 2012									
Fund#	Fund Name	Beginning Balance	Transfers Misc Inc. **	Investment Income	Contributions	Expenses	Administrative Fees	Scholarships	Ending Balance
E2850	Smith, Anna Margaret	30,879.47							30,879.47
E2900	Stetson, Saragay	6,577.13							6,577.13
E2910	Sugarman, George	178,886.61							178,886.61
E2925	Torne, Leah	79,876.54							79,876.54
E2935	Van Vlieden	42,987.77							42,987.77
E2945	Warner, Frank R	1,021.21							1,021.21
E2950	Wasserman, John L	23,330.60							23,330.60
E2960	Witt, Caroline	23,915.98							23,915.98
E2991	York, Jerome B	49,713.18							49,713.18
E2997	ZONTA	3,014.28							3,014.28
	Total Individual Scholarship Funds	2,777,912.85	4,523.09	41,162.48	5.00	(10,823.50)	-	-	2,812,779.92
	Endowment Program Funds								
E2552	Hay&Joy Mays Fund-Nursing	75,718.23	-	-	-	-	-	-	75,718.23
E3000	Diamond, I	28,574.44	-	-	-	-	-	-	28,574.44
E3100	Brown, R.A.	920,024.03	-	-	-	-	-	-	920,024.03
	Total Endowment Program Funds	1,024,316.70	-	-	-	-	-	-	1,024,316.70
	Total Endowment Funds	3,802,229.55	4,523.09	41,162.48	5.00	(10,823.50)	-	-	3,837,096.62

** Unrealized Gains

APPENDIX H

Crowe Horwath – College of Marin Foundation Audit - internal control observations

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 <div style="text-align: right;"> Crowe Horwath LLP <small>Independent Member Crowe Horwath International</small> </div>	
<p>To the Board of Directors College of Marin Foundation Kentfield, California</p>	
<p>In planning and performing our audit of the financial statements of the College of Marin Foundation ("Foundation") as of and for the year ended June 30, 2012, in accordance with auditing standards generally accepted in the United States of America, we considered the Foundation's internal control over financial reporting ("internal control") as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Foundation's internal control. Accordingly, we do not express an opinion on the effectiveness of the Foundation's internal control.</p>	
<p>Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as discussed below, we identified certain matters that we are required to or wish to communicate to you. Matters communicated in this letter are classified based on Statement on Auditing Standards No. 115, <i>Communicating Internal Control Related Matters Identified in an Audit</i>, as follows.</p>	
<ul style="list-style-type: none"> • Deficiency – A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. • Significant Deficiency – A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. • Material Weakness – A material weakness is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. 	
Accounts Payable	Material Weakness
<p>Observation:</p>	<p>The Foundation's original trial balance for the year ended June 30, 2012 presented for audit did not include all expenses and related payables. During the testing of disbursements occurring subsequent to June 30, 2012, three transactions were identified that should have been accrued as expenses in fiscal year 2012, however, the activity related to these transactions were originally recorded in fiscal year 2013. The three transactions, related to operational costs for the District's College Skills and Career Bridges program, equipment purchased to support District classes, and professional services rendered for accounting work. As a result of these items, Foundation management reexamined all disbursements occurring after June 30, 2012, and determined additional expenses totaling \$85,455 should be accrued in fiscal year 2012 requiring an adjustment to the Foundation's June 30, 2012 financial position.</p>
<p>Recommendation:</p>	<p>We recommend the Foundation's internal control process related to cash disbursements should ensure each disbursement is charged to the proper financial period. Further, services received, even if not billed, should be estimated and properly accrued at the close of each financial period.</p>

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Budgetary Controls – Encroachment of Restricted Funds		Material Weakness
Observation:	<p>During fiscal year 2012, the Foundation expended program funds held for restricted purposes to support the operations of the Foundation. For of the year ended June 30, 2012, expenditures of restricted funds to supporting ongoing operations totaled \$329,094. Management of the Foundation has projected the total encroachment of restricted funds to support Foundation operations at December 31, 2012 to total \$464,464. Subsequent to December 31, 2012, the Foundation operations were minimal.</p> <p>The operating budget adopted by the Foundation board of directors for the 2012 fiscal year projected expenses, excluding activity related to grants and scholarships to the District and it's students, totaling \$286,100. Actual expenditures for the year ended June 30, 2012, excluding activity related to grants and scholarships totaled \$760,673, exceeding the approved budget by \$474,573.</p> <p>The significant variances between the approved budget and actual expenses for the year ended June 30, 2012 relate to professional services and other general expenses.</p> <p>Professional service expenses for the 2012 fiscal year totaled \$403,362. The approved budget for professional services totaled \$7,200 resulting in a negative budget variance totaling \$396,162. Significant unbudgeted expenses related to professional services included accounting fees, legal fees, general consultants and contractors and temporary employees totaling \$46,163, \$54,796, \$188,362, \$21,880, respectively.</p> <p>The Foundation also incurred approximately \$25,000 in unbudgeted other expenses. The operating budget approved by the Foundation board of directors identified a plan to spend \$10,000 on other operating expenditures. For the year ended June 30, 2012, the Foundation actually spent \$35,000 on other operating expenditures. These expenses related to facility costs related to an offsite lease, moving costs, bank charges, supplies and other miscellaneous expenses.</p> <p>The budget variances were communicated at the Foundation board meetings, however, no action was taken to amend the approved budget.</p>	
Recommendation:	<p>The Foundation should have board policy prohibiting the use of restricted funds for purposes other than in which they were entrusted to the Foundation. The Foundation should have a clearly established operating budget representing the actual expected activity for the fiscal year. Amendments to the adopted budget should be approved by the Finance Committee and the Board of Directors. The amended budget should be clearly documented in the minutes of the Finance Committee and Board of Directors. Management should not disburse funds which do not agree with the budgetary plan established by the Board.</p> <p>The Foundation should develop a plan to correct the encroachment on restricted funds and to address the potential impact on the Foundation regarding a return of funds to grantors or donors for using restricted funds for operations.</p>	

Donor Letters		Significant Deficiency
Observation:	<p>The Foundation was unable to locate 11 donor letters to support funds restricted for specific purposes. In some instances, the restricted purpose was established by the Foundation a significant number of years prior to fiscal year 2012. In each instance where a donor letter could not be found, the Foundation did demonstrate a consistent use of the funds spanning multiple fiscal years. This method to support the proper and consistent use of restricted funds has been utilized by the Foundation in prior year fiscal year audits. Without the original donor letter the risk exists for restricted funds to be spent for purposes other than the intended use of the donor.</p>	
Recommendation:	<p>The Foundation should ensure when funds are donated a standardized document is utilized to ensure the intent of the donated funds is properly documented and followed. The form documenting the donor's intent and the Foundation's understanding of the donor's desired use of the funds should be signed by both the donor and management. The form should be maintained in a consistent location for use in subsequent periods.</p>	

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This communication is intended solely for the information and use of management, individuals charged with governance, the Board of Directors, and management and is not intended to be and should not be used by anyone other than these specified parties.

Crowe Horwath LLP

Crowe Horwath LLP

Sacramento, California
March 28, 2013

COLLEGE OF MARIN FOUNDATION

FINANCIAL STATEMENTS
JUNE 30, 2012