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VIA E-MAIL (.PDF)

Santa Clara County Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, California 95110

Attn: Neelima Palacherla, LAFCo Executive Officer
(Neelima.Palacherla@ceo.sccgov.org)

**Re: Draft El Camino Hospital District Audit and Service Review
August 1, 2012 Meeting Agenda Item No. 5**

Dear Ms. Palacherla:

I write to provide the El Camino Hospital District's ("District") written comments on the revisions to the *Draft El Camino Hospital District Audit and Service Review* prepared by Harvey M. Rose Associates, LLC, dated July 11, 2012 (the "Amended Report"). The District appreciates many of the changes reflected in the Amended Report. As stated in the District Board's June 22 letter to LAFCo, the District looks forward to working with LAFCo over the coming months to continue improving transparency and accountability policies as recommended on page 6-4 of the Amended Report and summarized as Recommendation 1 on page 6-9. Also as stated in the District Board's June 22nd letter, the District has already implemented many of these recommendations and will continue to review and evaluate the other suggestions in Recommendation 1.

The District requests several additional revisions to the Amended Report (discussed further below and as shown in Exhibit 1 attached hereto and incorporated herein by this reference) to clarify LAFCo's position and to conform the Amended Report to the LAFCo staff report published on July 28, 2012 (the "LAFCo Staff Report"). Most importantly, the District strongly requests LAFCo to reject Recommendation 2 on page 6-9 of the Amended Report that continues to include recommendations regarding a governance change between the District and the El Camino Hospital Corporation (the "Corporation") and whether LAFCo should consider initiating dissolution proceedings.¹ LAFCo and the District should focus on working collaboratively on the accountability and transparency policies outlined in Recommendation 1.

¹ This letter will not reiterate all the issues the District previously raised regarding the original Report, but will instead focus on the revisions issued on July 11, 2012. To the extent the Amended Report and/or the LAFCo Staff

1. The District's Understanding of the Staff Report Recommendations 6 through 8

The LAFCo Staff Report contains nine recommended actions. Several of the LAFCo Staff Report's recommendations are somewhat ambiguous and the District requests they be clarified at or before the August 1, 2012 hearing. LAFCo Staff Report Recommendation 6 states: "Request that the ECHD implement improvements in governance, transparency and public accountability as recommended in the Revised Draft Report and included in Attachment B [the Amended Report]." The District requests clarification of its understanding that this recommendation is specifically referring to numbered paragraphs 1 through 4 on page 6-4 and 6-5 of the Amended Report and Recommendation 1 on page 6-9 of the Amended Report. The District also requests clarification that this recommendation means that staff is not recommending that LAFCo adopt the first and second full unnumbered paragraphs on page 6-5 or Recommendation 2 on page 6-9 of the Amended Report (each of which are inconsistent with the LAFCo Staff Report). Also, to make the Amended Report consistent with the LAFCo Staff Report, the District requests clarification that LAFCo staff's intent is to recommend LAFCo substitute Recommendations 7 and 8 of the LAFCo Staff Report for Recommendation 2 on page 6-9 of the Amended Report. If these requested clarifications are consistent with staff's and LAFCo's intent, the Amended Report should be further revised at the hearing as suggested in attached Exhibit 1 to reflect this intent.

2. The Amended Report Should Not Include Recommendations Regarding The District's Control of the Corporation

If the above requested clarifications are inconsistent with staff's intent, or if LAFCo does not intend to adopt staff's recommendations, the District would have very serious concerns regarding Recommendation 2 of the Amended Report. The District requests that LAFCo not adopt the recommendations related to the governance structure of the Corporation on page 6-5 and reiterated, with an added condition that the Corporation not purchase property outside the District², as Recommendation 2 on page 6-9. Recommendation 2 would be an unwarranted interference with the management of the Corporation that is not supported by the record.

The Amended Report states that, regardless of whether the District implements the components of Recommendation 1 of the Amended Report, separating the governance structure of the District and Corporation is the "best approach." Amended Report at 6-5. Harvey Rose recommends that LAFCo permit the District "to attempt reforms before taking the step of requiring modifications of the governance structure." Amended Report at 6-5 (emphasis added). As explained in my partner's June 22 letter, LAFCo would not have the authority to require a governance change related to the relationship between the District and Corporation and suggestions to the contrary should be removed from the Amended Report.

Report's recommendations implicate objections that have been raised by the District, the District does not waive such objections by not separately re-stating those objections in this letter.

² The District also objects to LAFCo Staff Report Recommendation 8 to the extent it is intended to restrict either the District's or the Corporation's legal right to purchase property outside the District.

The Amended Report is also currently inconsistent regarding the policy reasons for changing the governance structure of the District and the Corporation. Harvey Rose states in the Amended Report that losing public control of the Corporation would achieve complete separation and independence between the District and Corporation. Amended Report at 6-5. However, in its response to comment document, Harvey Rose argues that if the governance change it urges is implemented, the District would need to figure out how to maintain control of the Corporation through contractual relationships. Response to CCN Letter at 7 (“the District would be bound by the public trust to establish agreements with the Hospital Corporation that would ensure public resources are safeguard and that the Corporation is accountable to the District”) (emphasis added) The Corporation is currently accountable to the District, and by extension, to the voters of the District. As shown in the JumpStart survey the District provided to LAFCo last week, the vast majority of respondents believe that District control of the Corporation results in better care and believe it is important that the hospital remain independent, locally owned, and locally controlled. Also, as found by KPMG in the report attached as Exhibit 2 to this letter and incorporated herein by this reference (the “KPMG Report”), the current relationship between the District and Corporation allows the District to have very low general and administrative expenses (less than 1% of District tax receipts for the fiscal year ended June 30, 2011, the lowest percentage found by KPMG). KPMG Report at 10. Harvey Rose’s recommendation to have LAFCo impose itself in the management of the District and Corporation, but to end up at the same place of having the Corporation accountable to the District, is unauthorized, costly and does not promote the interests of the communities served by the District.

Harvey Rose also ties a governance change to whether the Corporation continues to purchase any property outside the District. Amended Report at 6-9. This recommendation is based on Harvey Rose’s opinion that the Corporation purchasing property does not benefit the community served by the District. The Health Care District Law permits a health care district to establish, maintain, operate, or provide assistance in the operation of health care facilities or health services “at any location within or without the district for the benefit of the district and the people served by the district.”³ Health & Safety Code § 32121(j). As explained in our prior letters and as further described in the KPMG report, the purchase of the Los Gatos campus by the Corporation has benefited the District and the people served by the District. KPMG Report at 22-28. Harvey Rose’s disagreement with the District’s conclusion in this regard is irrelevant. The District Board is charged, in the exercise of its discretion and based on its expertise, to determine what is in the best interest of the District. LAFCo should defer to this expertise, just as a court of law would, and Harvey Rose should not invite LAFCo to do otherwise.

One of the benefits of the Corporation’s purchase of the Los Gatos campus for the communities served by the District is that it has resulted in a higher level of medical expertise in several fields, allowing the communities served by the District to receive a broader range of care. Harvey Rose’s rebuttal is that these services could have instead been purchased from Stanford. Response to CCN Letter at 9. That assertion evidences a glaring lack of understanding about the

³ Because the District’s enabling legislation permits it to operate outside its boundaries, the District would not need to enter a contract or agreement to provide services outside its boundaries. Gov. Code § 56133.

availability and delivery of quality health care to the District's constituents. Harvey Rose is correct that whether services should be extended beyond the boundaries of the District is an important policy question. Response to CCN Letter at 7. The relevant "policy makers" for this issue are the boards of the District and Corporation, the District's voters and ultimately the State Legislature. The continued threat of requiring governance changes is an impediment to progress and LAFCO should reject Recommendation 2.

3. **Whether LAFCo considers Dissolution Should Not be Tied to a Governance Change**

Though the revisions to the Amended Report soften the recommended mandates contained in the first published draft, the Amended Report continues to tie the recommendations of the Amended Report to dissolution of the District. Recommendation 2 states that if the Corporation does not implement the Amended Report's recommendations and undertake a governance change within six months of a future LAFCo request, LAFCo should consider whether to begin dissolution proceedings. Amended Report at 6-9. The Amended Report also states that if the District "has not satisfactorily accomplished the improvements in transparency and accountability suggested in this report and recommended below, a study should be commissioned as a first step towards dissolution." Amended Report at 6-9.⁴

This may be a slightly more veiled threat proposed by Harvey Rose than found in the original draft, but it is still a threat of dissolution if the District does not comply with these demands. To avoid the need to continue to expend resources because of the Amended Report's threat of dissolution, the District requests LAFCo direct staff to strike the continued references to dissolution from the Amended Report as suggested in attached Exhibit 1. The only reason why LAFCo should consider dissolving the District is if such action would meet the factors delineated in Government Code section 56881, none of which is established in the Amended Report.

4. **The Amended Report Continues to Contain References to Dissolution**

The District accepts at face value the Amended Report's statement that it does not contain any determinations for dissolution. However, if that is the case, additional revisions should be made reflect the Amended Report's intent. The Amended Report continues to contain unsupported assertions regarding public access and accountability. The Amended Report has simply removed the header identifying the original Report's finding and has not changed a single word of the prior determination. Amended Report at 6-3. Removing the header and moving the determination to another page of the Amended Report is an inadequate revision, despite the Amended Report's stated intent to not include any findings related to dissolution. The District requests that LAFCo delete from the second paragraph under the header "Maintain District Boundaries/Improve Governance, Transparency and Accountability" the sentence "With dissolution

⁴ The Amended Report also states that "The separation of the entities and disposition of assets and liabilities [associated with dissolution] would be complex. Therefore, before embarking on a path toward dissolution, Santa Clara County LAFCo should make an effort to encourage the District to implement suggested reforms."

of the District, public access and accountability would no longer be a concern” as described in attached Exhibit 1. There is no substantial evidence to support this conclusion, and given the Amended Report’s representation that it does not include dissolution determinations, this language is superfluous and unnecessarily inflammatory.

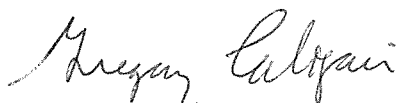
5. **The Amended Report Continues to Use Subjective, Moving Targets, as a Metric**

The Amended Report states that the District does not provide “remarkable” levels of community benefits nor does the Corporation provide “extraordinary” levels of unsubsidized care, and applies undefined standards to support its recommendation for a governance change between the District and Corporation. See, e.g., Amended Report at 4-20, 6-10. These are subjective metrics that are clearly in the eye of the beholder. The KPMG Report finds that the District and Corporation provide a high level of community benefits when compared to their peers and both the District and Corporation have received numerous commendations and awards for their benefits to the community. KPMG Report 7-22. The District is unaware of a requirement under the Cortese-Knox-Hertzberg Act or the Health Care District Law for the District to be “remarkable” or “extraordinary,” so it is unclear why this analysis is included in a service review. Nonetheless, the District intends to continue what it, and its constituents, consider to be invaluable and excellent service to the community.

6. Conclusion

The District remains committed to the delivery of excellent health care services while continuing to improve on transparency and public accountability.⁵ The District welcomes constructive dialogue with LAFCo on transparency and public accountability. However, the District believes that the Amended Report is legally flawed, unnecessarily antagonistic, and, even as revised, continues to threaten the District with requirements for changes in governance or dissolution unless it accedes to the Amended Report's demands. Adopting Recommendation No. 1 and setting aside Recommendation 2, and revising the Amended Report as suggested in attached Exhibit 1, is the way forward.

Sincerely,



Gregory B. Caligari

Attachments

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cc: (via e-mail)

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⁵ The District notes that before either the 2011 Civil Grand Jury report regarding the District or the original Report was issued, the District already published its agendas, minutes and audited financial statements online. The KPMG Report details how only 7 of 19 health care districts analyzed published their audited financial statements on their websites and that the District readily provided its agendas, minutes and bylaws on its website. KPMG Report at 17. This demonstrates that, though the District is willing to continue to improve, it in no way lags behind its peers in transparency or accountability.