May 29, 2012

BY EMAIL (.PDF)

Santa Clara County Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110
Attention: Chairperson Pete Constant and Honorable Commissioners
(Pete.Constant@sanjoseca.gov)

Re: Draft El Camino Hospital District Audit and Service Review
May 30 Santa Clara County LAFCo Meeting, Agenda Item No. 7

Dear Chairperson Constant and Honorable Commissioners:

I am writing on behalf of the El Camino Hospital District (the “District”) regarding
the May 23, 2012 Draft El Camino Hospital District Audit and Service Review prepared by Harvey
M. Rose Associates, LLC (the “Report”).

Given the short amount of time between the public release of the Report and the
May 30th LAFCo hearing, this letter is intended to present several of the District’s higher level
comments. We reserve the right to submit a more detailed comment letter prior to the expiration of
the public comment period regarding this matter.

The District strongly disagrees with the Report’s recommendations to have District
residents give up control of the Mountain View Hospital and to begin actions towards dissolving the
District if the recommended changes, that would limit the District’s authority to provide its health
care services, are not implemented, especially given that the Report acknowledges strong, positive
results achieved under the current structure. The mandates in the Report related to the control,
management and potential dissolution of a governmental agency appear unwarranted given no
finding of impropriety is made related to the governance structure or finances of either the District
or the El Camino Hospital Corporation (the “Hospital Corporation”) related to the acquisition of
the Los Gatos campus, or otherwise. Indeed, the Report finds that the Hospital Corporation is a
“successful organization in a thriving healthcare market,” that provides “a vital healthcare service in
the community” and that the District has demonstrated “an ability to contain costs and improve[]
financial performance.” The Report also concludes that the District and the Hospital Corporation
are “performing well” and in “good to excellent, as well as stable” financial condition. The
recommendation to upset the current governance of the District and the Hospital Corporation,
including the possible dissolution of the District, and the conclusion that continued contribution of
taxpayer resources to the District are no longer justified, make no sense given these findings.
The following is a summary (discussed in more detail below) of our initial concerns with the Report:

- The Report fails to present information in a neutral manner and omits information that demonstrates the benefits the community derives from the District.

- The Report ignores the clear and unambiguous language of State law when it implies that the District’s transfers to the Hospital Corporation may be unlawful.

- The Report ignores the corporate separateness of the District and the Hospital Corporation.

- The Report places no value on the public control of the Mountain View Hospital and would have LAFCo mandate that this vital asset to the community become private even though the Report concludes the current governance structure complies with State law.

- The various proposed mandates put forward by the Report are beyond LAFCo’s authority. Rather than promoting orderly development and efficient and affordable service delivery, the Report advocates substituting the opinion of LAFCo over that of a publicly elected decision-making body in an area wholly outside LAFCo’s expertise – the provision of health care services. The Report asks LAFCo to abrogate the enumerated powers of the District under the Health & Safety Code to determine what is in the best interests of the District and the people served by the District.

- The Report’s dissolution findings are unlawful and unwarranted.

1. The Report Advocates Rather than Discloses.

We have concerns that facts are not presented in a neutral manner as would be expected in a service review or audit. For example, the Report repeatedly states that the District does not “distinguish itself.” The relevant metric for service reviews under the Cortese-Knox-Hertzberg Act is “effective or efficient service delivery.” Gov Code § 56430(a)(7). Given that the Santa Clara County Board of Supervisors unanimously adopted a resolution on May 22, 2012 (the “County Resolution”) stating that the District provides “the most cost-effective, direct use of its funds to benefit the health of our community,” it is unclear what standard Harvey Rose expects the District to meet to avoid the loss of control of the Hospital Corporation or dissolution.

Setting aside the disagreement between Harvey Rose, on one hand, and the District and the County, on the other hand, regarding whether the District does distinguish itself, ultimately whether the District distinguishes itself is criticism that does not further the analysis of whether the District provides efficient or effective benefits to the community. The lack of neutrality of the
Report is also apparent in its failure to enumerate the highly valuable and effective community benefit programs funded by the District and the awards both the District and the Hospital Corporation have received for their service to the community.

The report details pages of community benefit standards applicable to health care districts or not-for-profit hospitals (Report at 4-15 to 4-18) and finds that the District and the Hospital Corporation comply with these standards. Report at 4-18. Yet, Harvey Rose finds that based on metrics that, to the District's knowledge, have never been used in another health care district service review, that the District does not distinguish itself. Report at 4-19. Harvey Rose uses this conclusion to support the loss of public control of the Hospital Corporation and dissolution of the District. Report at 6-10. Given that all of the District’s community benefit programs would be put at risk if LAFCo adopts the draft Report, the District feels it is important for LAFCo and the public to be aware of the vital services the District provides to those that would otherwise have inadequate access to health care. We have attached a table of the District’s community benefit program recipients from FY09 through FY11, all of which serve District residents, as well as a copy of the text of the County Resolution, so that LAFCo and the public have a better understanding of some of the benefits the District provides to its residents.


The 1992 transactions between the District and the Hospital Corporation described in the Report transferred assets greater than 50% of the District assets to the Hospital Corporation in compliance with the applicable requirements of Health & Safety Code section 32121(p). The provisions of the Health & Safety Code that the Report asserts may have been violated (see Report at 4-11) were added during the 1991-92 regular session and the 1993-1994 regular session of the State Legislature (including the voter approval requirement for district transfers of 50 percent or more of the district’s assets referred to in the Report). These changes do not apply to “[a] district that has discussed and adopted a board resolution prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.” Health & Safety Code § 32121(p)(4)(A). The District had discussed and adopted a board resolution prior to September 1, 1992 that authorized the development of a business plan for an integrated delivery system. As a result, with respect to transfers between the District and the Hospital Corporation, the District is exempt from the changes to section 32121(p) made between 1991-1994. Health & Safety Code § 32121(p)(4)(A). The Report seems to second guess the State Legislature by stating “it is unclear why the Legislature would exempt the District from such an important provision.” Report at 4-11. Harvey Rose’s skepticism does not justify ignoring the plain language of State law. The District is exempt under the clear and unambiguous language of Health & Safety Code section 32121(p)(4)(A). Recognizing this exemption, the District fought to ensure that transfers of assets by the Hospital Corporation would be subject to voter approval by requesting and obtaining the enactment of Health & Safety Code section 32121.7.
3. The Report Discounts the Corporate Separateness of the District and the Hospital Corporation.

The Report repeatedly recognizes that the District and the Hospital Corporation are separate legal entities. Indeed, State law permits the governance structure used by the District and the Hospital Corporation, and specifically recognizes the District and the Hospital Corporation as separate legal entities. (See, for example, Health & Safety Code § 32121.7). However, the Report essentially ignores that fundamental legal distinction, and states that “any activities of the [Hospital] Corporation are, by extension, activities of the District” (Report at 5-9) and repeatedly states that the District and the Hospital Corporation are indistinguishable from a governance and financial perspective. This is a fundamental inconsistency in the Report that is not legally defensible. The District agrees that consolidated financial statements for the District and the Hospital Corporation are required by accounting practices and are a standard for financial reporting for government agencies and others. However, from a legal and governance standpoint, the District and the Hospital Corporation are separate and distinct entities. There is no basis to penalize or mandate business decisions when the District is complying with the law.


The Report contains no substantiated finding that the changes recommended by the Report would result in greater accountability for community service needs. Indeed, we believe the proposed changes would actually decrease transparency, public accountability and efficiency. The recommended changes to the Hospital Corporation’s Board would insulate it from community control as it would no longer consist of a majority of publicly elected board members who must be responsive to their constituents. Further, the recommended changes could result in the Brown Act no longer applying to Hospital Corporation Board meetings, which would result in reduced transparency related to Hospital Corporation operations and management, and the elimination of the requirement that that the audit of Hospital Corporation finances be made publicly available.

From the District’s exit interview with Harvey Rose it was clear that, in Harvey Rose’s view, the loss of public control of the Hospital Corporation is not a LAFCo concern, thus any loss of transparency or public access to the Hospital Corporation itself is irrelevant to its recommendations. LAFCo’s consultant may not consider it important that the District, and therefore ultimately the voters of the District, control the Mountain View Hospital – but the District values that greatly, and believes that the voters of the District do as well.

5. The Report is Not Consistent with the Cortese-Knox-Hertzberg Act.

a. LAFCo is an Agency With Limited Authority.

LAFCo is an agency with specific, enumerated, powers. Gov. Code § 56375. Notably, LAFCo is only authorized to impose conditions on a local agency in limited circumstances. See, e.g., Gove Code §§ 56375(a)(5); 56376.5(c) (“This section shall not be construed as authorizing a commission to impose any conditions which it is not otherwise authorized to
impose”); 56886 (conditions that may be imposed related to reorganization). The Cortese-Knox-Hertzberg Act does not authorize LAFCo to impose conditions related to a sphere of influence (“SOI”) determination except when considering an amendment to an SOI requested by a third party. Gov. Code § 56428(e).

One of LAFCo’s primary responsibilities is to establish an SOI for local governmental agencies “to promote the logical and orderly development of areas within the sphere.” Gov. Code § 56425(a). A LAFCo is required to review and possibly update an agency’s SOI at least once every five years. Gov. Code § 56425(g). In determining an agency’s SOI, a LAFCo can consider reorganization, including dissolution, of an agency when it is found to be feasible and “will further the goals of orderly development and efficient and affordable service delivery.” Gov. Code § 56425(h); see also Gov. Code § 56375(a)(2)(F) (dissolution is an act of reorganization).

b. The Report Proposes Actions Beyond LAFCo’s Authority.

The statutory purpose of a service review is to provide the information necessary “to prepare and to update spheres of influence.” Gov. Code § 56430. The Cortese-Knox-Hertzberg Act requires a service review to include seven determinations. These include “[a]ccountability for community service needs, including governmental structure and operational efficiencies” and “[a]ny other matter related to effective or efficient service delivery . . . .” Gov. Code § 56430(a)(6)-(7). State law permits a LAFCo to assess the consolidation of government agencies, but only to the extent such consolidation “improve[es] efficiency and affordability of infrastructure and service delivery within and contiguous to the sphere of influence . . . .” Gov. Code § 56430(b). In sum, LAFCo is only authorized to review the District’s SOI or reorganization to the extent such review is related to “efficient and affordable service delivery.” LAFCo’s own service review policies reflect this limitation. Santa Clara LAFCo Service Review Policies, p. 1 (“The service reviews are intended to serve as a tool to help LAFCo, the public and other agencies better understand the public service structure and evaluate options for the provision of efficient and effective public services;” service review may be used to “[r]ecommend actions when necessary, to promote the efficient provision of those services”). Given that Harvey Rose concludes that the District puts almost 100% of its funds that are not restricted by the Gann limit towards community benefit programs, and thus, in our view, is a model for efficiency, the conclusions of the Report are unfounded and unlawful.

c. The Report Asks LAFCo to Become the District’s Manager.

In apparently its first ever service review for a health care district, Harvey Rose appears to be acting as a management consultant, rather than providing LAFCo the information necessary to ensure orderly development and efficient and affordable service delivery. Harvey Rose

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1 Harvey Rose appears to have relied on a superseded version of the law because the Report does not include all required determinations. Government Code section 56430(a)(2) requires a determination of the “location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.” However, the Report’s statement of determination makes no such determination. Report at 5-20 to 5-21.
has prepared a service review that would substitute the opinion of LAFCo over that of a publicly
elected decision-making body in an area wholly outside LAFCo’s expertise – the provision of health
care services. For example, the Report requires the District to stop expending its funds on capital
improvements to the Mountain View Hospital and instead “divert these funds to community
benefits programs” (Report at 6-4), even though the District’s expenditure of funds on capital
improvements to the Mountain View Hospital is fully consistent with State law and the voters’
approval of a measure to tax themselves for that purpose. In addition, the Report requires that the
District divert its funds from existing community benefits recipients “to other programs that more
directly benefit the residents of the District” (Report at 6-4) even though the current expenditures of
community benefits dollars are fully consistent with State law, and as recognized by the County
Resolution, the District currently provides “the most cost-effective, direct use of its funds to benefit
the health of our community” which “funds have directly helped 12,518 patients receive cost-
effective primary care and dental services, avoiding inevitable emergent medical and dental crises that
would require many times the funding to treat.” County Resolution.

The Report includes a mandate that, if these and other recommended actions that
would limit how the District provides its health care services are not implemented, the District
Board must remove the District as the sole voting member of the Hospital Corporation and change
the membership of the Hospital Corporation Board to include majority representation by
individuals other than members of the District Board of Directors. If this governance change is not
made, the Report concludes the District should be dissolved. Report at 6-10.

To be clear, the District welcomes the opportunity to consider recommendations for
how it could best serve the District and further increase transparency. But imposing mandates that
abrogate powers of the District given by its enabling legislation is an unauthorized imposition of a
condition and unrelated to the affordable or efficient provision of health care services. Gov. Code §§ 56425(h); 56430(a)(6)-(7).

d. The Report Would Have LAFCo Usurp the Powers Granted to a
Publicly Elected Board Even Though Current Operations are Authorized by Law.

The Report also separately mandates that “if the [Hospital] Corporation continues to
purchase property outside of the District boundaries” the District must give up control of the
Hospital Corporation or face dissolution. The justification for this requirement is not stated by
Harvey Rose. Perhaps it is based on Harvey Rose’s assertion that, because the Hospital Corporation
has received funds from the District specifically to support the El Camino Mountain View Hospital,
that all Hospital Corporation revenues, including any revenues not received from the District, must
be spent within the District boundaries. We note that this proposed limitation mirrors legislation
vetoed by Governor Schwarzenegger, SB 1240 (Corbett, 2010). This legislation would have, with
certain exceptions (including one applicable to the Hospital Corporation), required all revenues
generated by a health care district facility or facilities that are operated by another entity, to be used
exclusively for the benefit of a facility within the geographic boundaries of the district and owned by
the district. The Governor’s veto message stated that existing law already provided for balanced
safeguards, and that the bill would have “disrupt[ed] the balance between local discretion by local
elected officials and state policy for assuring access to health care.” If LAFCo approves the Report, it
would be taking the position that it has the ability to impose conditions on health care districts that was proposed by the Legislature but rejected.

The Report also ignores that the Los Gatos campus, and the dialysis service centers that have been in operation for approximately 20-years, are owned and operated by the Hospital Corporation and not the District. As stated above, the Report’s conclusion that “any activities of the [Hospital] Corporation are, by extension, activities of the District” (Report at 5-9) is not legally defensible or consistent with the Report’s recognition that the Hospital Corporation and the District are separate legal entities. But even assuming, for the sake of argument, that the Hospital Corporation’s actions are, by extension, actions of the District, the District itself has the right to own and operate health care facilities within and without the limits of the District. Health & Safety Code section 32121(c) specifically provides that a health care district has the power to:

- purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district,
- and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district,[emphasis added]

and Health & Safety Code section 32121(j) specifically provides that a health care district has the power to:

- establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities; retirement programs, services, and facilities; chemical dependency programs, services, and facilities; or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district. [emphasis added]

The Report would essentially take away the enumerated powers of the District under these provisions of the Health & Safety Code to determine what is in the best interests of the District and the people served by the District, rather than leaving that decision where it belongs, with publicly elected District board members who must be responsive to their constituents.

The Report’s mandate that the District no longer exercise rights that it is specifically empowered to exercise under the enabling legislation for health care districts is improper and there is no precedent or authority that supports such a mandate. We also believe that implementing the requirement that the District give up sole voting membership of the Hospital Corporation would require confirmation by the voters of the District under the Health & Safety Code, which issue is not identified or considered in the Report at all. See Health & Safety Code § 32121.7.
The Report’s Dissolution Findings are Unlawful and Unwarranted.

LAFCo does not have the power to impose conditions on the District or mandate how the District should exercise its discretion. It is one thing for LAFCo to make recommendations related to the seven determinations required in a service review, but when those recommendations become mandates that the District cede its rights and powers granted by the State Legislature on threat of dissolution, LAFCo would be exceeding its authority. As explained above, LAFCo is only authorized to self-initiate reorganization action such as dissolution if it “will further the goals of orderly development and efficient and affordable service delivery.” Gov. Code § 56425(h). However, dissolution is threatened in the Report, not to further the efficient and affordable delivery of health care services, but to be used by LAFCo as a hammer, if the District does not acquiesce to the Report’s demands.

The Cortese-Knox-Hertzberg Act provides no authority for LAFCo to threaten local agencies with dissolution if an agency does not permit LAFCo to substitute LAFCo’s judgment for that of the agency with respect to matters unrelated to the efficient and affordable delivery of services. Instead, dissolution must further the affordable and efficient delivery of health care services. The Report fails to explain how dissolving the only health care district in Santa Clara County would improve access to health care services.

The District provides invaluable community benefits related to health care, and dissolution of the District would result in the community being denied access to needed medical services without any reduction in taxes to the District residents. This is because any successor agency would not have a legal mandate to use its increased tax allocation for health care purposes. Further, the Report’s findings that the District and the Hospital Corporation no longer needs taxpayer support is beyond the role of LAFCo in determining an appropriate sphere of influence. Any decision of whether taxpayer dollars should be redirected from health care services is reserved to the State or the voters of the District.

Given that the Report concludes that the District and Hospital Corporation are well managed and valuable assets to the community, the Report’s recommendation of dissolution if the District does not accede to all of the Report’s demands appears completely unnecessary and should be rejected. At the very least, the findings required to dissolve the District should not be made.

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2 We also question the appropriateness of the Report’s concluding that the sphere of influence or boundaries of the District should not be expanded, despite an explicit recognition that such expansion would better reflect the Mountain View Hospital’s service reach into surrounding communities. Harvey Rose appears to be playing two sides of a coin. It complains that the District and the Hospital Corporation provide services to “non-District residents, who are not taxed” (Report at 6-10) but also argues against expanding the SOI because it result in “additional taxpayers, who already have access to Mountain View Hospital services,” would be taxed. Report at 6-6 (emphasis added). Those two arguments appear irreconcilable. It should be noted that the Hospital Corporation does not deny service to anyone based on their location of residence or ability to pay.
unless and until LAFCo has actually determined to initiate dissolution proceedings. In addition, the Report fails to disclose the requirement in Gov. Code section 57103 that any LAFCo resolution ordering dissolution of a health care district is subject to confirmation of the voters, which requirement was not eliminated or modified by California Assembly Bill 912, which implemented changes to Gov. Code section 57077 only.

6. **LAFCo Should Not Adopt the Report’s Recommendations Regarding Corporate Restructuring or Dissolution.**

We urge LAFCo to not adopt the Report’s recommendations regarding corporate restructuring or dissolution so that the Report better reflects the purpose of a service review and LAFCo’s authority. Finally, since there is no immediate recommendation of initiating dissolution proceedings, we respectfully request that LAFCo not adopt any of the dissolution findings contained in the Report. Dissolution proceedings have not been initiated, thus it is premature to adopt findings related to such proceedings before an adequate record has been developed. The District intends to zealously defend its autonomy to determine how to continue to provide “the most cost-effective, direct use of its funds to benefit the health of our community” and manage its operations. We look forward to working with LAFCo to address our concerns.

Sincerely,

[Signature]

Gregory B. Caligari

Attachments
6272114165106

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3 We have significant concerns regarding all of the dissolution findings in the Report. For example, we note that the finding for whether dissolution would promote public access and accountability is circular. The Report simply finds that if there were no longer a District then public access and accountability would be moot. This ignores whether dissolution would promote public access and accountability. It also makes the requirement to make such a finding a nullity, effectively stripping it from the statute, because any LAFCo could make the same finding to dissolve any agency without consideration of any agency-specific facts. This makes the Report’s findings completely arbitrary.
cc: (by email)
Vice-Chairperson Wasserman (Mike.Wasserman@bos.sccgov.org)
Chairperson Kniss (Liz.Kniss@bos.sccgov.org)
Commissioner Abe-Koga (Margaret.AbeKoga@mountainview.gov)
Commissioner Vicklund-Wilson (Susan@svwilsonlaw.com)
Neelima Palacherla, LAFCo Executive Officer (Neelima.Palacherla@ceo.sccgov.org)
Emmanuel Abello, LAFCo Clerk (Emmanuel.Abello@ceo.sccgov.org)
Malathy Subramanian, LAFCo Counsel (Malathy.Subramanian@bbklaw.com)
Steve Foti, Harvey M. Rose Associates, LLC (sfo@harveyrose.com)
Wesley F. Alles, Board of Directors, El Camino Hospital District (walles@stanford.edu)
David Reeder, Board of Directors, El Camino Hospital District (dwreeder@sbcglobal.net)
John L. Zoglin, Board of Directors, El Camino Hospital District (jzoglin@comcast.net)
Patricia A. Einarson, M.D., M.B.A., Board of Directors, El Camino Hospital District
(peinarson@stanfordalumni.org)
Tomi Ryba, President and Chief Executive Officer, El Camino Hospital Corporation
(Tomi.Ryba@elcaminohospital.org)
H.E. (Ned) Borgstrom, Jr., Past Interim Chief Financial Officer, El Camino Hospital
Corporation (Ned_Borgstrom@elcaminohospital.org)
Michael King, Chief Financial Officer, El Camino Hospital Corporation
(Michael_King@elcaminohospital.org)
## FY09-FY11 Community Benefit Grants Distributed

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## FY09-FY11 Community Benefit Sponsorships Distributed

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**TOTAL GRANTS AND SPONSORSHIPS**  
$2,304,195 | $4,952,914 | $5,047,463

## FY09-FY11 Community Benefit Government Means Tested Distributed

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**TOTAL GRANTS, SPONSORSHIPS & Means Tested**  
$2,379,195 | $5,652,914 | $5,122,463

**Final total after Adjustments**  
$2,379,195 | $5,112,914 | $5,039,688
Attachment 2

Text of County Resolution
(Unanimously adopted by Santa Clara County Board of Supervisors on May 22, 2012)

WHEREAS, Santa Clara Valley Medical Center is dedicated to the health of the whole community, providing a comprehensive health care system which includes an established network of community clinics known as Valley Health Centers. Valley Health Centers ensure that residents have access to vital primary care, laboratory, radiology, dental care, behavioral health care and pharmacy services in their neighborhoods; and

WHEREAS, cuts in California’s state budget have resulted in reductions in coverage for critically important preventive services for Santa Clara County residents using Medi-Cal, and many more people have recently been left without health care coverage due to recent economic constraints across the country; and

WHEREAS, El Camino Hospital District has as its mission to address the unmet health needs of its community, and has over the past three years donated $3,814,000 to underwrite otherwise un-funded services at Valley Health Center Sunnyvale. These funds have directly helped 12,518 patients receive cost-effective primary care and dental services, avoiding inevitable emergent medical and dental crises that would require many times the funding to treat; and

WHEREAS, the partnership between El Camino Hospital District and Santa Clara Valley Medical Center is a model of collaboration between a public health system and a non-profit hospital district to meet their shared goal of improving our community’s health. El Camino Hospital and Santa Clara Valley Medical Center have been developing programs and support systems as part of readying the County for health care reform. An important element of the partnership is fully developing the “medical home” model in which all care is provided in one place.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Santa Clara, State of California does hereby honor and commend El Camino Hospital District for its dedication to the health of the people of Santa Clara County and the partnership it has undertaken to make the most cost-effective, direct use of its funds to benefit the health of our community.

PASSED AND ADOPTED this Twenty-Second Day of May, Two Thousand Twelve, by unanimous vote.

__________________________
George M. Shirakawa
President, Board of Supervisors

__________________________
Mike Wasserman
Supervisor, District One

__________________________
Ken Yeager
Supervisor, District Four

__________________________
Dave Cortese
Supervisor, District Three

__________________________
Liz Kniss
Supervisor, District Five

__________________________
Lynn Regadanz
Interim Clerk, Board of Supervisors