



Lou Ann Texeira
Executive Officer

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March 14, 2012 (Agenda)

March 14, 2012
Agenda Item 9

Contra Costa Local Agency Formation Commission
 651 Pine Street, Sixth Floor
 Martinez, CA 94553

Mt. Diablo Health Care District - Governance Options, Next Steps and Timeline

Dear Members of the Commission:

SYNOPSIS

On January 11, 2012, the Commission received the LAFCO special study of governance options for the Mt. Diablo Health Care District (MDHCD). In accordance with the special study, the Commission adopted a zero sphere of influence for MDHCD signaling the Commission’s intent to dissolve the District and appoint a successor agency. The Commission continued the public hearing to March 14, 2012, and directed LAFCO staff to return in March with the next steps for selecting a successor agency and determining terms and conditions.

Since January 11, LAFCO staff has participated in a series of meetings and conversations with the affected agencies, including the cities of Concord, Lafayette, Martinez, and Pleasant Hill, County Service Area (CSA) EM-1, John Muir Health (JMH) and MDHCD.

This report provides next steps and timelines for two governance options based on the conclusions and recommendations of the special study and subsequent discussions with the affected agencies.

DISCUSSION OF GOVERNANCE OPTIONS WITH AFFECTED AGENCIES

The special study was initiated in response to past and ongoing concerns as to whether MDHCD should continue as a special district, and in response to findings contained in the 2007 LAFCO MSR. The study identified several governance options and recommended dissolving MDHCD and appointing a successor agency to either continue the service or wind up the affairs of the District.

In January 2012, the Commission received testimony relating to the special study and governance options. The Commission heard from the City of Concord that the City is interested in being named as successor agency. The Commission also heard from CSA EM-1 that they were not interested in being named as successor agency and would defer to the City of Concord.

Subsequently, the Commission took action to signal dissolution of MDHCD and name a successor agency and directed LAFCO staff to discuss these options with the affected agencies.

LAFCO staff participated in meetings and conversations with staff from the cities of Concord, Lafayette, Martinez and Pleasant Hill, CSA EM-1, JMH and MDHCD, as summarized below.

City of Concord - LAFCO and Concord City staff discussed the costs/benefits associated with either establishing the MDHCD as a subsidiary district to the City to continue the services of MDHCD, or dissolve MDHCD and appoint the City as successor to simply wind up the affairs of the District.

In order for the City to continue the services, the City must apply to LAFCO to reorganize MDHCD through detachment and establishing MDHCD as a subsidiary district to the City. In accordance with State law, the City would have to comprise at least 70% of land area and at least 70% of the registered voters within the subsidiary district. Under this scenario, the MDHCD is not dissolved, and becomes a subsidiary district of the City with the Concord City Council serving as the governing board of the subsidiary district.

The process to reorganize the MDHCD (i.e., detachment and establishment of the district as a subsidiary district of the City) involves an application to LAFCO (i.e., map/legal description, financial plan, plan for service, etc.), a reconsideration period, a protest hearing, and possibly an election (if written protests are filed by at least 25% of voters or landowners) as summarized in Attachment 1.

The protest proceedings would occur within the boundary of the MDHCD as it exists today. According to County Elections, as of March 2, 2012, the MDHCD had 103,542 registered voters. As noted above, a 25% written protest is needed to drive the reorganization to a vote, which is approximately 25,885 voters; it is unlikely that this threshold will be met. However, should this threshold be met and the proposed reorganization be submitted to the voters, the election could be conducted by mailed ballot. According to County Elections, the estimated cost to conduct a Special All Mail Election (Stand Alone) is \$4.25 per registered voter, which, based on the current voter count, would be approximately \$440,053.

The reorganization process involving detachment and establishment of MDHCD as a subsidiary district of the City of Concord would take more time than dissolution alone. As outlined in Attachment 1, the reorganization process is expected to be complete by Winter 2012, absent a protest/election. This option could also be costly if an election were required. Added to the possible election costs are the City's costs associated with preparing and filing the LAFCO application, including preparation of a map and legal description.

Another timing factor is that MDHCD is scheduled to have an election in November 2012 for Board seats. If there are sufficient nominees, the contest goes on the ballot. If there are insufficient nominees or nominees equal to the vacancies to be filled, the contest does not go on the ballot, with the qualified candidate(s) appointed in lieu of election.

The benefits of the City of Concord continuing the services through a subsidiary district include receipt of some or all of the estimated \$240,000 in property taxes currently received by MDHCD. Other potential benefits are associated with the Community Benefit Agreement (CBA) with JMH. In addition, MDHCD representatives have previously asserted that the dissolution of a health care district is an issue that should be decided by the voters. Although LAFCO staff does not concur with

the District's assertion, establishing MDHCD as a subsidiary district of the City would put an end to this issue.

On March 6, the Concord City Council was asked to consider the governance options relating to MDHCD. As indicated in their letter (Attachment 2), the City Council indicates that it is open to either reorganizing the MDHCD and establishing a subsidiary district, or to dissolving MDHCD and being named the successor to wind up the affairs of the District. The City has been in discussions with JMH and the parties have identified similar goals with regard to the following key issues:

- Continuation of the \$1 million Community Health Fund (CHF)
- Continuation of the 10-member CHF board, with five (5) members to be appointed by public bodies, including three (3) appointments by Concord, and two (2) appointments by other public bodies as determined by LAFCO
- Potential funding for up to 10 years to offset the loss of property tax revenues in the event of dissolution/wind up of MDHCD
- Continued use of MDHCD assets to serve the health care needs of the community, including the \$1 million CHF, the status of the Concord hospital, and the 10-member CHF governing board

The City also indicates that it is unwilling to assume the burden of the District's lifetime health benefits and the unfunded liability, and that this issue must be resolved prior to City stepping in as successor to either wind up the affairs or continue services via a subsidiary district.

Cities of Lafayette, Martinez and Pleasant Hill – LAFCO staff had discussions with the Lafayette, Martinez and Pleasant Hill City Managers. Given the small portion of Lafayette within the MDHCD (0.4% of the District's population, 0.7% of the District's assessed value), Lafayette has expressed no interest in being a successor agency or future involvement in the issue. Martinez and Pleasant Hill city staff expressed no interest in being named successor to MDHCD; however, both expressed some interest in being part of the ongoing discussion regarding the \$1 million CHF and the governing board subject to consideration by their city councils.

CSA EM-1 – LAFCO staff met with County staff to discuss the issue of successor agency. County staff indicated that they would defer to the City of Concord to be the successor agency to either continue the service or wind up the affairs of MDHCD. County staff also indicated that if for some reason Concord is unable to assume the role of successor agency, and if all other avenues are exhausted, CSA EM-1 would accept the role of successor agency subject to a clear definition of responsibilities and authority and approval by the County Board of Supervisors.

John Muir Health - LAFCO staff met with JMH staff to discuss the CBA, and specifically, the \$1 million CHF, the status of the Concord hospital, and the 10-member CHF governing board. As indicated in their letter (Attachment 3), JMH is willing to cooperate with LAFCO regardless of the governance option selected. JMH and City of Concord staff have discussed key issues and are mutually committed to preserving the essential elements of the CBA as outlined above. Also, as noted in their letter, JMH is willing to increase its investment in the CHF in the event that the LAFCO action results in the loss of property tax for community health care services.

Further, JMH states its commitment to continue to utilize the District's assets to serve the health care needs of the community. In their letter, JMH provides a discussion of proposed amendments to the CBA related to the reversionary, termination, and other provisions, noting that both the City and JMH believe that such revisions will ensure the community's interest. JMH has provided a summary

and analysis of the public process and provisions in place under State law that safeguard the community's interest in the ongoing provision of health care services.

Mt. Diablo Health Care District - LAFCO staff met with the MDHCD representatives who provided an overview of the District's current activities which include securing an annuity to fund the health insurance liability, implementing a granting process to target community health needs, developing a business plan and new revenue sources. District staff acknowledges that these activities will be affected by LAFCO's decision regarding the future of the District. MDHCD staff expressed concern with dissolution and potential impacts to the \$1 million CHF; the District's assets, including the Concord hospital; and whether naming a successor agency, other than a health care district, is legal and viable.

NEXT STEPS/TIMELINE

The next steps and timeline are dependent on the selected governance option. The process and timeline for a reorganization involving detachment and a city-initiated establishment of a subsidiary district are summarized in Attachment 1.

The process and timeline for a LAFCO-initiated dissolution of MDHCD and naming the City of Concord as successor agency to wind up the affairs of the District are summarized in Attachment 4.

Both options involve LAFCO public hearings, making required statutory findings, notifying State agencies, a reconsideration period, a protest hearing and a possible election.

RECOMMENDATIONS

A. SELECT A GOVERNANCE OPTION

- 1. If the selected option is to dissolve MDHCD and name the City of Concord as successor to wind up the affairs of the District, take the following actions:**
 - a. Close the public hearing;
 - b. Find that the dissolution is categorically exempt from CEQA pursuant to CEQA Guidelines General Rule exemption Section §15061(b)(3), and pursuant to Class 20 – *Changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised.*
 - c. Approve the attached resolution (Attachment 5) initiating dissolution of MDHCD, making certain findings, and naming the City of Concord as successor to wind up the affairs of the District;
 - d. Direct LAFCO staff to notify State agencies pursuant to Government Code §56131.5;
 - e. Direct LAFCO staff to work with the City of Concord and JMH to develop an agreement addressing key issues and associated LAFCO terms and conditions, and return to LAFCO on June 13, 2012 with these documents; and
 - f. Set a public hearing for June 13, 2012 to consider dissolution of the MDHCD, and naming the City of Concord as successor agency to wind up the affairs of the District.

2. **If the selected option is for the City of Concord to apply to LAFCO to reorganize MDHCD (i.e., detachment, establishment of subsidiary) take the following actions:**
- a. Close the public hearing and determine not to initiate dissolution at this time;
 - b. Ask the City of Concord to confirm its intent to apply to LAFCO to reorganize the MDHCD and establish an estimated timeline for the reorganization;
 - c. Direct LAFCO staff to work with the City of Concord and JM Health to develop an agreement addressing key issues and associated LAFCO terms and conditions. This agreement will be part of the City's application;
 - d. After the reorganization has been initiated, direct LAFCO staff to notify State agencies pursuant to Government Code §56131.5; and
 - e. Acknowledge that the reorganization will be subject to a future LAFCO hearing and protest proceedings as generally described Attachment 1.

B. CONTINUE THE MATTER

- a. Close the public hearing.
- b. If the Commission needs more information, CONTINUE this matter to a future meeting and provide staff with further direction.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

c: Distribution

Attachments:

1 – Process/Timeline – City Initiated Reorganization – Detachment and Establishment of a Subsidiary District

2 – Letter dated March 7, 2012, from City of Concord

3 – Letter dated March 7, 2012 from John Muir Health

4 – Process/Timeline – LAFCO Initiated Dissolution and Naming City of Concord as Successor to Wind up Affairs of MDHCD

5 – Draft Resolution Initiating Dissolution of MDHCD and Naming the City of Concord as Successor to Wind up the Affairs of MDHCD

STEPS INVOLVED IN CITY-INITIATED DETACHMENT AND THE ESTABLISHMENT OF MDHCD AS A SUBSIDIARY DISTRICT OF THE CITY

March 2012

City of Concord should advise LAFCO at the March meeting whether it wants to initiate a detachment and establish MDHCD as a subsidiary district of the City.

If LAFCO determines that the detachment and establishment of a subsidiary district is appropriate, LAFCO should close the public hearing on dissolution and determine not to initiate dissolution at this time.

Spring/Summer 2012

City submits to LAFCO EO a formal application to reduce the boundaries of the MDHCD(i.e., detachment) and to establish MDCHD as a subsidiary health district of the City, including:

- Proposed terms and conditions
- Legal description and map
- Plan for providing service
- Information re financing
- CEQA finding

Upon receipt of the proposal for detachment and establishment of subsidiary district, the EO notifies MDHCD of City's proposal (GC 56861), and notifies State agencies of application under GC 56131.5 [State has 60 days to respond].

Summer 2012

MDHCD has 35 days following receipt of notice from EO to adopt a resolution consenting to the subsidiary district or adopt a resolution to file an alternative proposal. GC 56861.

Assume NO consent by MDHCD

If MDHCD files an application for alternative proposal, they must do so within 70 days after submitting notice of intent to LAFCO. GC 56862.

Summer/Fall 2012

IF MDHCD files a resolution of intention to file an alternative proposal, the LAFCO EO shall take no further action on the proposal to form a subsidiary district for a period of 70 days. GC 56862.

Fall 2012

After receiving an alternative proposal from MDHCD, the EO shall analyze both the original proposal and the alternative and set for hearing before LAFCO. GC 56862.

Fall 2012

LAFCO holds a hearing on original and alternative proposals and considers any response from State under GC 56131.5. LAFCO adopts a resolution of determination either denying both proposals or approving one and denying the other. GC 56862, 56863.

Fall/Winter 2012

Following 30 day reconsideration period, LAFCO staff holds protest proceedings. If written protest is received by at least 25% of voters or landowners (owning at least 25% of the assessed value of land), the proposal shall be submitted to the voters for confirmation. GC 57077(c), 56854(a)(1) and 57081(b) & (c). [See GC 57150(e) re election expenses].

Winter 2012

Absent the requisite protest/election, LAFCO orders the detachment, establishes a sphere for the subsidiary district, establishes MDHCD as a subsidiary district of the City of Concord under GC § 57534 and records detachment and subsidiary district paperwork.

CITY OF CONCORD
1950 Parkside Drive, MS/01
Concord, California 94519-2578
FAX: (925) 798-0636

OFFICE OF THE MAYOR
Telephone: (925) 671-3158



CITY COUNCIL
Ronald E. Leone, Mayor
William D. Shinn, Vice Mayor
Timothy S. Grayson
Daniel C. Helix
Laura M. Hoffmeister

Thomas J. Wentling, City Treasurer
Valerie Barone, Interim City Manager

March 7, 2012

Chair Tatzin and Members of the
Contra Costa County LAFCO
651 Pine Street, 6th Floor
Martinez, CA 94553

Re: Reorganization of Mt. Diablo Health Care District

Dear Chair Tatzin and Commissioners:

I write on behalf of the Concord City Council to provide the City of Concord's views on the possibility that it might succeed to the responsibilities of the Mt. Diablo Health Care District. This letter was discussed at the March 6th meeting of the Concord City Council and represents the City's position on these issues as authorized by the Council (3-0-2; Hoffmeister absent, Leone recused).

In general, Concord believes that the level of services of the Health Care District should continue largely in their present form. The City is open to accomplishing this objective either by reorganizing the District as a subsidiary district of the City so that its assets, liabilities, programs and services can be maintained without needless cost and expense, or by dissolving the District and designating the City as its successor to wind up affairs. The first option will require detachment of some portions of the District (perhaps Martinez and unincorporated areas to its east, which do not contribute significantly to its property tax revenues) so that the City will not exceed 70% of the population and territory of the subsidiary district as required by the Cortese-Knox-Hertzberg Act.

Maintenance of Community Health Foundation Grant Programs. We agree that John Muir Healthcare's funding commitment to public health grant programs should be maintained, as should the other community benefits provided by the 1996 Community Benefit Agreement (CBA) between John Muir and the District. John Muir has affirmed its willingness to do so. If Concord governs the District as a subsidiary district of the City, the CBA would continue in force between John Muir and the District, but the City Council would serve as the governing body of the District. If the City is designated as a successor to a dissolved District, we request that the City be designated as the successor to the District's rights in the CBA so the City can renegotiate that agreement with John Muir Healthcare and enforce its important community protections into the future.

Protection of the Hospital Assets for Public Health Programs. The current Community Benefit Agreement provides hospital asset protections primarily through the reversionary provision; however, that provision now serves as a disincentive to continued upgrades and investment by John Muir in the former Mt. Diablo Hospital campus. Although confirming legal research is necessary, the City of Concord believes that there are adequate protections under State Law that serve the same purpose as the reversionary provision, particularly given John Muir's non-profit status and the attendant restrictions on its use/sale of assets. If additional protections are needed, it would be the City's intent to create a mechanism in a revised Community Benefit Agreement that serves the dual purpose of protecting community health interests while promoting additional investment in the Concord campus over time by John Muir.

Maintenance of the District's Property Tax Revenues. If the District continues as a subsidiary district of the City, its property taxes may continue as well and will remain restricted to District purposes. Property taxes might be lost from the detachment areas depending on the outcome of a Revenue & Taxation Code § 99 negotiation with the affected jurisdiction(s), but these may not be substantial depending on what territory is detached. John Muir has indicated a willingness to replace any net loss of property taxes for at least 10 years via a renegotiated CBA. If the District is to be dissolved and the City named as the successor for wind-up purposes, the District's grant program would cease to exist for lack of funding. However, preliminary discussions with John Muir suggest that any lost property taxes can be covered via increased funding of the Community Health Foundation Grant Programs in the context of a renegotiation of the CBA.

Appointment of the Community Health Foundation Board. The City has no objection to a condition of the reorganization spelling out the appointing authorities for the 5 public-agency appointed representatives on the Foundation board. Concord suggests that given the location of the Mt. Diablo campus within City limits, Concord's status as the largest City in the District and its anticipated future role as either the successor or subsidiary to the District, that the Concord City Council have the appointing authority for at least three seats on the Board.

The Health Care District's Pension Liability. The City is not willing to have this approximately \$800,000 cost (as defined in LAFCO's report) shouldered only by the taxpayers of the subsidiary district or the City, as the case may be. All taxpayers of the existing District should pay this cost in fair proportion. This might best be accomplished by LAFCO conditioning the District to address this liability with their existing assets prior to dissolution. The City of Concord remains open to other solutions as well, but in any approach the cost of the liability should be borne by the entire district and the issue should be resolved prior to the City of Concord stepping in as the successor to wind-up affairs or a subsidiary district.

Thank you for the opportunity to collaborate with LAFCO. We look forward to continued discussions.

Very truly yours,



William D. Shinn
Vice Mayor, City of Concord

cc: Members of the Concord City Council
Valerie Barone, Interim City Manager
Mark Coon, Acting City Attorney



1400 Treat Boulevard
Walnut Creek, CA 94597-2142

A not-for-profit organization

March 7, 2012

Chairman Don Tatzin
Contra Costa County Local Agency Formation
Commission
651 Pine Street, 6th Floor
Martinez, California 94553

Re: Mt. Diablo Healthcare District

Dear Chairman Tatzin and Commissioners:

We are submitting this letter to provide John Muir Health's perspective in the event LAFCO orders the dissolution of the Mt. Diablo Healthcare District (District). LAFCO staff has asked us to work with the City of Concord to address how the Community Benefit Agreement would be impacted if the City became the successor to the District.

John Muir Health's Perspective

John Muir Health is deeply committed to providing health care to residents of the communities served by the District. Following the transfer of the District's health care assets in 1996, John Muir Health has consistently demonstrated its commitment to John Muir Medical Center, Concord by investing in excess of \$325 million, including \$212 million for the Hofmann Family Patient Care Tower, which opened in November 2010. These investments represent \$61 million in excess of the cash generated from the operation of the transferred assets since 1996 and an additional \$63 million in bond debt incurred by John Muir Health for additions to the Concord campus. For context, the net value of the transferred assets in 1996 was \$65 million.

John Muir Health's relationship with the District has been governed by the Community Benefit Agreement that brought together John Muir Medical Center (now John Muir Medical Center, Walnut Creek) and Mt. Diablo Medical Center (now John Muir Medical Center, Concord). Under the Community Benefit Agreement, John Muir Health established the John Muir/Mt. Diablo Community Health Fund. Since 1997, the year the Community Health Fund was formed by the merger, the Fund has granted more than \$21 million in John Muir Health community benefit dollars into local community-based health projects.

If LAFCO dissolves the District and appoints the City of Concord as the successor to the District, the community will not lose the benefits of the Community Benefit Agreement. Both the City of Concord and John Muir Health are committed to preserving the essential elements of the Community Benefit Agreement to protect the community's interest in high quality, accessible health care within the community. Notably, the core elements of an amended Community Benefit Agreement between the City of Concord and John Muir Health would be:

- John Muir Health will continue its \$1 million annual investment in the Community Health Fund (\$37 million through 2049, the term of current Community Benefit Agreement).
- Five of the 10 members of the Community Health Fund Board will continue to be appointed by public bodies, with 3 appointments being made by Concord and 2 appointments by other public bodies who represent other communities of the District as determined by LAFCO (the other 5 members will continue to be appointed by the John Muir Association)
- If LAFCO action results in the loss of the property tax revenue for health care, John Muir Health is willing to increase its investment in the Community Health Fund up to an annual amount of \$240,000 for ten years to offset that loss (potentially up to an additional \$2.4 million)
- John Muir Health will continue to use the District assets to serve the health care needs of the community.

Public Oversight

In order to ensure that John Muir Health can continue to invest in the Concord campus into the future for the benefit of the community and without concern that its additional investments could revert to a successor entity in 2049, both the City of Concord and John Muir Health believe it is in the community's interests to discontinue the reversionary and other termination and related provisions of the existing Community Benefit Agreement. There are adequate public processes and protections already in place under State law, including oversight from the Attorney General and Department of Public Health that safeguard the community's interests in the ongoing provision of health care in the community, particularly for hospitals owned by non-profit organizations. (Please see Appendix A for more information on these protections.)

We believe these substantial oversight processes ensure the community's interests in the ongoing provision of health care in the community without the need for a reversionary interest in the District assets. To be clear, we have no plans to merge, sell or give up local control of John Muir Health. These are additional protections presented to address possible community concerns.

John Muir Health Assets Subject to a Charitable Trust

It also is important to note that the assets of John Muir Health are themselves subject to a charitable trust. As a nonprofit organization, the charitable mission of John Muir Health is to serve the health care needs of the entire community, which incorporates the service areas of both the former Mt. Diablo Medical Center and John Muir Medical Center, Walnut Creek. The purposes of John Muir Health include establishing and maintaining hospitals and clinics, carrying on related educational activities and research and participating in other activities designed to promote the general health of the community. As part of its charitable mission, John Muir Health has the obligation to preserve and protect its assets for meeting these health needs of the community.

John Muir Health's Community Benefit Contributions

As part of its nonprofit status, John Muir Health is also required by both state and federal law to provide community benefit programs and services. In 2010, John Muir Health provided \$39.2 million in community benefit programs and services to communities in Contra Costa County. From 2008-2010, our Community Benefit contributions were more than \$110 million. Last year, 82 percent of John Muir Health's community benefit activities were specifically targeted to those individuals and families who experience social and economic barriers that preclude their access to necessary health care services.

John Muir Health keeps abreast of current health issues of importance to the community through active participation with various community-based organizations. These sources of information provide information regarding community health status and also help identify emerging needs in the areas we serve.

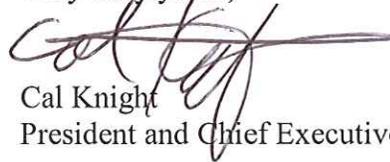
Proposed Public/Private Partnership with the City of Concord

We believe this new proposed public/private partnership approach with the City of Concord will best meet the future health care needs of residents in the community. The City of Concord and John Muir Health have mutual and aligned interests in meeting these needs as represented by our more than \$200 million investment in a new facility in Concord to help meet the health care needs of the community. John Muir Medical Center,

Commissioners
Contra Costa LAFCO
March 7, 2012
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Concord is an integral part of John Muir Health's future. As a locally-governed and operated health system with two medical centers, a behavioral health center, outpatient facilities and more than 900 affiliated physicians, we will continue to be able to expand the depth and breadth of health care services offered to the communities we serve. We believe the proposed structure of an amended Community Benefit Agreement and a public/private partnership between the City of Concord and John Muir Health as outlined in this letter best achieves these goals and serves the health care needs of the community.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Cal Knight', with a long horizontal flourish extending to the right.

Cal Knight
President and Chief Executive Officer

APPENDIX A

OVERSIGHT SAFEGUARDS OF COMMUNITY INTEREST IN ONGOING PROVISION OF HEALTH CARE

1. Summary of Public Oversight of Sales and Transfers of Hospitals and Closures of Hospitals and Emergency Departments (see §2 and 3 below)

- The California Attorney General (AG) oversees, through a review and consent process, any sale or transfer of a health facility owned or operated by a nonprofit corporation since these assets are held in public trust¹.
 - The review process includes submission of comprehensive information about the proposed transaction, public meetings and, when necessary, preparation of expert reports.
 - The AG reviews numerous factors, including whether the proposed use of the proceeds is consistent with the charitable trust on which the assets are held by the hospital or affiliated nonprofit health system.
 - The AG's decision often requires the continuation of existing levels of charity care, continued operation of emergency rooms and other actions necessary to avoid adverse effects on healthcare in the local community.
 - Another tool the AG has used is to require that the proceeds of the transaction be placed in a nonprofit foundation dedicated to the same or similar health care purposes.
- The California Department of Public Health (CDPH) must approve any closure or downgrade of hospital emergency services requested by a hospital. The process requires the applicable county Emergency Medical Services to prepare a Hospital Emergency Services Reduction Impact Assessment Report and includes public notice and hearing regarding the planned reduction².
- California law also requires advance notice to CDPH if a hospital intends to close a general acute care hospital or eliminate or relocate supplemental services to a different campus³.

2. Oversight by the Attorney General of Sales and Transfers of Health Facilities

- **What Transactions are Subject to AG Review and Consent?**
 - Any nonprofit corporation that operates or controls a health facility or a facility that provides similar health care, must provide written notice to, and obtain the written consent of, the AG before entering into any agreement or transaction to:

¹ California Corporations Code §5914-5925 and related regulations

² California health & Safety Code §1300(b)

³ California health & Safety Code §1300(a)

- Sell, transfer, lease, exchange, option, convey, or otherwise dispose of its assets *either to a for-profit corporation or to another nonprofit corporation* when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.
 - Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation *either to a for-profit corporation or to another nonprofit corporation*.
 - Includes transfers the control of, responsibility for, or governance of the nonprofit corporation; substitution of one or more members of the governing body, or any arrangement, written or oral, that would transfer voting control of the members of the governing body.
- **What Health Facilities are Included?**
 - **“Health Facility” includes acute care hospitals and skilled nursing facilities licensed to provide 24-hour care.**
- **When is a Transaction “Material” and Subject to this Review Process?**
 - The transaction directly affects *more than 20% of the value* of the health facilities that are operated or controlled by the nonprofit corporation; or
 - The transaction involves the sale, transfer, exchange, change in control or governance of, or otherwise disposes of any health facility or facility that provides similar health care that is operated or controlled by the nonprofit corporation and that has a *fair market value that exceeds \$3 million*; or
 - The transaction involves the sale, transfer, exchange, change in control or governance of, or otherwise disposes of *any general acute care hospital*.
- **What is Included in the Attorney General Review Process?**
 - Applicant files 5 copies of notice and all required materials (see notice requirements described below).
 - AG notifies applicant within 60 days of its decision to consent to, give conditional consent to, or not consent to the transaction.
 - An “independent health care impact statement” may be required for the transaction, and notice is not deemed received until the statement is complete.
 - The AG may extend the 60-day deadline for a decision by an additional 45-day period under certain circumstances if the extension is necessary to obtain information from contracted consultants.
 - Public hearing(s) are held:
 - The AG must hold at least one public meetings in the county in which any health facility is located. The AG may hold additional public meetings as

necessary to ensure full consideration of the proposed transaction. Also, the applicant or any other party may hold public meetings to discuss the proposed transaction.

- At least 14 days before the public hearing, the AG provides notice of the time and place of the hearing to: (1) the applicable county board of supervisors, (2) any person who has requested notice, and (3) through publication in a newspaper of general circulation in the community.
- The AG may hold additional public hearings if a substantive change in the proposed transaction is submitted after the initial public meeting.
- If an independent health care impact statement is prepared for the transaction, it must be available for public review for at least 10 days before the public hearing.

- **What must be included in the Notice?**

- Comprehensive information and data is required in each of the following:
 - "Description of the Transaction" Section
 - "Fair Market Value" Section
 - "Inurement and Self-Dealing" Section
 - "Charitable Use of Assets" Section
 - "Impacts on Health Care Services" Section
 - "Possible Effect on Competition" Section
 - "Other Public Interest Factors" Section
- "Independent Health Care Impact Statement" is required for any transaction:
 - That directly affects a general acute care hospital with more than 50 acute care beds; or
 - Where there is a fair argument that the transaction may result in a significant effect on the availability or accessibility of existing health care services.
- An "Independent Health Care Impact Statement" is an assessment of the effect of the transaction on:
 - emergency services, reproductive health services and any other health care services the hospital provides.
 - the level and type of charity care the hospital has historically provided.
 - the provision of health care services to Medi-Cal patients, county indigent patients, and any other class of patients.
 - any significant community benefit program the hospital has historically funded or operated.

- staffing for patient care areas as it may affect availability of care, on the likely retention of employees as it may affect continuity of care, and on the rights of employees to provide input on health quality and staffing issues.
 - an assessment of the effectiveness of any mitigation measure proposed by the applicant to reduce any significant adverse effect on health care services identified in the impact statement.
 - A discussion of alternatives to the proposed transaction including closure of the hospital.
 - Recommendations for additional feasible mitigation measures that would reduce or eliminate any significant adverse effect on health care services identified in the impact statement.
- **Are There Exceptions to the Attorney General Review Process?**
 - An applicant can request a waiver from the notice requirement but will be required to provide (i) a description of the proposed transaction, (ii) a copy of all documents that effectuate any part of the proposed transaction; (iii) a description of the proposed use by the nonprofit corporation of any sales proceeds, and (iv) an explanation of why the waiver should be granted.
 - The AG must grant or deny the request within 30 days after all of the information needed to evaluate the waiver request has been submitted.
 - The AG is required to consider whether any of the decisional factors for consent (see below) are applicable to the proposed transaction, and a waiver must be denied if any of these decisional factors require full AG review of the proposed transaction.
 - Transactions in the ordinary course of business and transfers to an affiliate are not subject to the notice requirements.
 - **What Factors Does the AG Use to Provide Consent, Conditional Consent or to Deny Consent?**
 - whether the terms and conditions of the transaction are fair and reasonable to the selling nonprofit corporation.
 - whether the transaction will result in inurement to any private person or entity.
 - the fair market value of the transaction
 - whether the market value has been manipulated by the parties to the transaction in a manner that causes the value of the assets to decrease.
 - whether the proposed use of the proceeds from the transaction is consistent with the charitable trust on which the assets are held by the health facility or affiliated nonprofit health system.

- whether the transaction involves or constitutes any breach of trust.
- whether sufficient information and data has been provided by the applicant to evaluate adequately the transaction or its effects on the public.
- whether the transaction may create a significant effect on the availability or accessibility of health care services to the affected community.
- whether the effect of the transaction may be substantially to lessen competition or tend to create a monopoly.
- the extent of independence that the nonprofit corporation retains as a result of the transaction.
- whether the transaction is in the public interest.
- **Does the Attorney General Monitor the Completed Transaction and any Conditions?**
 - The AG is required to monitor compliance with any terms and conditions of any transaction the AG has consented to or given conditional consent. The AG may retain experts and consultants as necessary to evaluate compliance and is entitled to reimbursement for costs and expenses.

3. Oversight by the California Department of Public Health of Hospital and Emergency Services Closures

- **What Steps Are Required Before a Hospital Can Close or Downgrade an Emergency Department?**
 - The hospital must obtain approval of the California Department of Public Health (CDPH).
 - At least 90 days before the planned action, the hospital must provide notice of the intended change to the CDPH, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity.
 - The hospital must provide public notice of the intended change during the same time period.
 - Upon receipt of notice, the county must prepare an impact evaluation including how the closure or downgrade will affect emergency services, including community access to care. County EMS is charged with conducting this impact evaluation.
 - The impact evaluation and public hearing must be completed with 60 days of the notice.

- The State may exempt a hospital from these requirement if it (i) determines the use of resources necessary to keep the emergency department open would substantially threaten the stability of the hospital as a whole or (ii) cites the hospital for unsafe staffing practices in its emergency department.
- **What Steps Are Required Before a Hospital Can Close a Hospital or Relocate Supplemental Services to Another Campus?**
 - A hospital must provide advance notice to CDPH of its intention to close a general acute care hospital or eliminate or relocate supplemental services to a different campus.
 - The affected facility must (i) post a notice at the facility entrance; (ii) notify CDPH and; (iii) notify the applicable county Board of Supervisors
 - The notice must include:
 - A description of the proposed closure, elimination, or relocation.
 - A description of the three nearest available comparable services in the community. If the facility serves Medi-Cal or Medicare patients, the notice must specify if the providers of the nearest available comparable services serve Medi-Cal or Medicare patients.
 - Contact information for the facility, any parent entity or any company that acts as the administrator of the facility, and the CEO where interested parties may offer comments.

STEPS INVOLVED IN LAFCO INITIATED DISSOLUTION OF MDHCD NAMING CITY OF CONCORD AS SUCCESSOR TO WIND UP

January 2012

LAFCO declared intent to dissolve District. LAFCO adopted a zero SOI for the District. The Commission directed staff to meet with City of Concord, MDHCD, John Muir, County and affected cities to explore who should participate in carrying on service, and in what manner.

February 2012

LAFCO staff conferred with MDHCD, affected cities, John Muir and CSA EM-1.

March 2012

1. The City of Concord presents a written notification to LAFCO indicating its desire to become the successor for purposes of winding up the affairs of the district pursuant to GC 57451(c) and outlining goals and objectives.
2. The Commission will be asked to consider adopting a resolution initiating dissolution (in the form attached to Staff report for meeting of March 14, 2012) and indicating its intent to name City of Concord as successor for purposes of winding up. The Commission will close the hearing and direct staff/Concord/John Muir to return with further information about terms and conditions.
3. Following the Commission meeting, if a resolution initiating dissolution is adopted, LAFCO staff will notify state agencies of the resolution initiating dissolution pursuant to GC 56131.5. State agencies have 60 days from receipt of the proposal to comment. LAFCO must consider comments received from the State agencies in making its decision.

April - May 2012

1. Concord and John Muir will prepare proposed conditions and any necessary agreements for LAFCO to consider in adopting a resolution to dissolve the District.
2. Executive Officer reviews and prepares proposed terms and conditions for consideration by LAFCO.

June 2012

LAFCO holds noticed public hearing to consider approving resolution dissolving the District, naming City of Concord as successor agency to wind up affairs under GC 57451.

- a. LAFCO considers and makes findings on comments received from State agencies under GC 56131.5.
- b. LAFCO considers GC 56668 factors.
- c. LAFCO imposes terms and conditions as Commission deems appropriate. [GC 56885, 56886]

July 2012

Following 30 day reconsideration period, LAFCO staff holds protest proceedings. [GC 57077, 57008]

August 2012

Absent the requisite protest, the Commission orders dissolution.

If there is no election, or dissolution is approved by the voters, LAFCO staff executes and records dissolution and files with the State Board of Equalization making the dissolution effective. [GC 57200] On the effective date of dissolution all corporate powers of the MDHCD cease, except as required by a term or condition imposed on the dissolution by LAFCO. [GC 57450, 56886]

DRAFT
RESOLUTION OF APPLICATION OF THE
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
INITIATING PROCEEDINGS FOR
DISSOLUTION OF THE MT. DIABLO HEALTH CARE DISTRICT AND
APPOINTING THE CITY OF CONCORD AS SUCCESSOR AGENCY TO WIND
UP THE AFFAIRS OF THE MDHCD

WHEREAS, on January 11, 2012, the Commission accepted the *Special Study: Mt. Diablo Health Care District Governance Options*; and

WHEREAS, in accordance with the findings and conclusions of the special study, Contra Costa LAFCO desires to initiate a proceeding for dissolution specified herein; and

WHEREAS, this proposed dissolution is being considered because, for many years, the MDHCD has suffered from financial, operational and governance challenges. According to the Special Study, from 2000 through 2007, the District spent virtually no funds for community health care purposes; the District does not own or operate any facilities; and the District has spent significant funds on administrative, legal and overhead costs.

NOW, THEREFORE, the Contra Costa LAFCO does hereby resolve and order as follows:

1. Determine, as lead agency for the purposes of the California Environmental Quality Act (CEQA), that the proposed dissolution is categorically exempt under §15061(b)(3) of the CEQA Guidelines, and direct staff to file a Notice of Exemption.
2. This proposal is made, and it is requested that proceedings be taken, pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000, commencing with section 56000 of the California Government Code.
3. This proposal is dissolution of the MDHCD and appointment of the City of Concord as successor agency to wind up the affairs of the MDHCD pursuant to Government Code §57451(c).
4. In accordance with Government Code §56375(a)(3), LAFCO may initiate a dissolution if it is consistent with a recommendation or conclusion of a study prepared pursuant to Government Code §56378, 56425 or 56430, and LAFCO makes the

determinations specified in §56881(b). A special study was undertaken pursuant to this section, and the proposed dissolution is consistent with the special study.

5. Pursuant to Government Code §56881(b), LAFCO finds that the public service costs resulting from the proposed dissolution would be less than or substantially similar to the costs of alternative means of providing the service; and that the proposed dissolution would promote public access and accountability for the community services needs and financial resources.
6. Pursuant to Government Code §56886, terms and conditions relating to the proposed dissolution and appointment of the City of Concord as the successor agency to wind up the affairs of the MDHCD will be developed.
7. A map of the affected territory is set forth in Exhibit A, attached hereto and by reference incorporated herein.
8. The proposal is consistent with the zero Sphere of Influence of the District, as adopted by LAFCO on January 11, 2012.
9. The LAFCO Executive Officer shall be designated as the contact person for this proposal.

PASSED AND ADOPTED this 14th day of March 2012

AYES:
NOES:
ABSTENTIONS:
ABSENT

DON TATZIN, CHAIR, CONTRA COSTA LAFCO

I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated above.

Dated: March 14, 2012

Lou Ann Texeira, Executive Officer