



Lou Ann Texeira
Executive Officer

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November 14, 2018
 Agenda Item 6

November 14, 2018 (Agenda)

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

Request for Reconsideration – Dissolution of Los Medanos Community Healthcare District

Dear Commissioners:

SYNOPSIS: On September 12, 2018, the Commission approved dissolution of the Los Medanos Community Healthcare District (LMCHD) and related actions, including adopting a zero sphere of influence for the LMCHD, adopting a resolution approving the dissolution with terms and conditions, naming Contra Costa County as successor agency, and adopting findings and determinations pursuant to the California Environmental Quality Act (CEQA). The Commission’s approval is subject to protest proceedings pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH Act,” Gov. Code Section 56000 et seq.). The protest hearing is currently scheduled for November 30, 2018.

Government Code (GC) section 56895 (Attachment 1) provides that when LAFCO adopts a resolution making determinations, any person or affected agency may file a written request with LAFCO requesting amendments to, or reconsideration of, the resolution. GC section 56895 further provides that the request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. Requests for reconsideration must be received within 30 days of the adoption of the LAFCO resolution. Pursuant to GC section 56895(b), this is a mandatory deadline. The deadline for submitting a request for reconsideration of the Commission’s resolution approving the dissolution of LMCHD was October 12, 2018.

On October 12, 2018, LAFCO received a request for reconsideration from Elizabeth M. Calciano, Attorney, Hensley Law Group (Attachment 2). Ms. Calciano serves as special legal counsel to LMCHD. Ms. Calciano’s letter requests that the Commission take any one of a number of different actions, each of which would either reverse the Commission’s decision to dissolve the District or postpone the Commission’s decision: (1) reconsider and ultimately rescind Commission Resolutions No. 17-13A and 17-13B providing for a zero sphere of influence (SOI) and approving the LMCHD dissolution, respectively; (2) postpone the Commission’s consideration of the District’s reconsideration request for at least 30 days so the District can engage in additional fact-

finding; (3) take the position that Resolution No. 17-13B has not yet been adopted by the Commission and postpone the final adoption of Resolution No. 17-13B until certain factual inquiries can be made regarding a potential conflict of interest; and (4) to not dissolve the District. The District also encourages the Commission to conduct its own investigation into certain facts to preserve the integrity of the process. The District does not ask for a specific modification to either Resolution No. 17-13A or 17-13B.

DISCUSSION: As stated in the attached letter, the District makes this request on procedural grounds and because the District has concerns regarding a potential conflict of interest on the part of Commissioner Glover. These issues, along with LAFCO staff analysis and recommendations, are presented below.

1. Procedural Objections

- a. **District's Comment/Concern Regarding LAFCO's Action to Adopt Resolution Approving Dissolution of LMCHD** - As noted in the attached letter, the Commission approved dissolution of LMCHD on September 12, 2018, and approved three amendments to the staff-provided resolution, amendments which were consistent with the Commission's discussion. At the meeting, the LAFCO Chair noted that LAFCO staff would bring back the final language to the Commission at a subsequent meeting. The District contends that the Chair's comment to have the final language brought back to the Commission means that the Commission did not actually adopt the Resolution.

Response - On September 12th, as part of the Commission's deliberations and approval, the Commission made one amendment to the LAFCO resolution approving the dissolution, adding two members to the County's 5-member Los Medanos Advisory Committee. The Commission also added two new conditions to that LAFCO resolution - one relating to the County's future expenditures on administrative/overhead costs and grant funding, and another restricting the use of future proceeds of any sale, transfer, redevelopment or reuse of the Pittsburg Health Center (PHC) facility and property to healthcare related purposes within the LMCHD community. Pursuant to the Cortese-Knox-Hertzberg Local Government Act (GC section 56000 et seq.), LAFCO has the authority to *approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization.*

The Commission's motion and approval on September 12th, was to approve Option 1 in the LAFCO staff report. Option 1 included the following actions:

- Making the CEQA findings and determinations
- Adopting LAFCO Resolution 17-13A approving a zero sphere of influence (SOI) for LMCHD and setting forth determinations
- Adopting LAFCO Resolution 17-13B approving dissolution of LMCHD and setting forth the Commission's terms, conditions, findings and determinations
- Assigning a distinctive short-term designation to the proposal and description of the affected territory
- Designating Contra Costa County as successor agency
- Finding that the territory is inhabited and subject to protest proceedings

The record reflects that the Commission adopted LAFCO Resolution 17-13B approving

dissolution of LMCHD on September 12, 2018, and providing for a protest proceeding. The record further reflects that no further action would be taken by the Commission other than the Commission being provided a copy of the amended resolution at its next meeting and completion of the protest proceedings.

- b. **District's Comment/Concern Regarding Availability of the Amended LAFCO Resolution** - As noted in the attached letter, early in the week of October 8th, LAFCO received requests relating to the LAFCO resolution approving the dissolution. The first inquiry and request was made to LAFCO staff on October 8th by Gary Bell, the District's special legal counsel who inquired about the status of LAFCO Resolution 17-13B and next steps in the process; the second request was made to LAFCO's special legal counsel on October 9th by Elizabeth Calciano, the District's additional special legal counsel who also inquired about the status of the resolution and requested a copy of the amended resolution.

Response - LAFCO staff indicated on October 8, 2018 to Mr. Bell that the amended resolution was not yet available as staff had not yet inserted the final language into the resolution. Subsequently, LAFCO made the amendments to the resolution, as adopted by the Commission, and, as noted in the District's letter, provided a copy to Ms. Calciano on the morning of October 12th. Commissioners were also provided a copy of the amended resolution. While the final resolution was not provided until October 12, 2018, District representatives and counsel attended the September 12, 2018 Commission meeting and were present when the Commission adopted the resolution with the amended and modified conditions.

- c. **District's Comment/Concern Regarding Commission Staff Acting Outside the Scope of its Authority** – The letter indicates that it appears Commission staff acted outside the scope of the authority and direction given to them by the Commission in finalizing the resolutions with the three amendments.

Response – LAFCO staff did not act outside the scope of the authority and direction provided by the Commission in amending the LAFCO resolution with the three amendments requested by the Commission. As directed by the Commission on September 12th, and as reflected in the record, LAFCO staff made amendments to LAFCO Resolution 17-13B and have provided it to the Commission as Item #7 on November 14th Commission meeting agenda as an informational item.

The record reflects that the Commission adopted LAFCO Resolution 17-13B approving dissolution of LMCHD on September 12, 2018, and that LAFCO did not contemplate any further action being taken on the dissolution other than the Commission being provided a copy of the final resolution at a subsequent Commission meeting and completion of the protest proceedings on November 30th. This practice is consistent with other resolutions approving changes of organization the Commission has approved in the very recent past, and staff treated this resolution no differently from the others.

The record also reflects that the Commission indicated that the protest hearing for the dissolution would be scheduled by staff. The protest hearing may only be scheduled once the Commission has approved the dissolution and may not be scheduled during the time for reconsideration. Accordingly, staff provided notice of the protest hearing on October 2, 2018, and scheduled the protest hearing for November 30, 2018.

- d. **District's Comment/Concern Asserting the District was Deprived of a Fair Hearing Having Received a Copy of the Amended LAFCO Resolution 17-13B on the Same Day the Request for Reconsideration was Due** – The letter indicates that the District did not have sufficient opportunity to review, comment, and provide testimony and other documentation regarding the additional and modified conditions because the language was not finalized at the September 12, 2018 meeting and was only made available on the morning of October 12th. The letter also notes that a fair hearing requires, at a minimum, notice and an opportunity to be heard, and that neither was provided here. Further, the District claims that it reasonably expected, based on the September 12, 2018 motion and vote, that it would have an opportunity at a future meeting to comment on the three additional conditions. Consequently, the District believes that the 30-day reconsideration period has not yet begun to run pursuant to GC section 56895.

Response – The District had notice of the September 12, 2018 Commission public hearing on the dissolution application and had an opportunity to be heard. Several LMCHD representatives attended the September 12th LAFCO hearing, including Board members, District staff and legal counsel who heard the discussion and Commission's deliberations. District representatives had the opportunity to comment, and did comment, on the dissolution application and were present for the entire discussion regarding both the modified and additional conditions. Further, the full audio recording of the September 12th LAFCO meeting was available on the LAFCO website as of September 14th. If the District had questions or concerns about the Commission's action or amended or additional conditions, one of its representatives could have, and should have, raised those concerns during the public hearing on September 12th, or subsequently contacted the LAFCO office.

Additionally, the District determined on its own that it had until October 12th to submit a request for reconsideration, and arguably did not reasonably believe that it would have a further opportunity to review and comment on the amended and additional conditions, as the District claims in its request for reconsideration. Moreover, despite the statement in the District's letter to the contrary, LAFCO staff did not inform the District that its deadline to file a request was October 12th. LAFCO staff did provide Resolution 17-13A and 17-13B to the District's special legal counsel on October 12th and did note the need to pay a filing fee (in conjunction with the request for reconsideration), but had not previously independently informed the District of this deadline.

It should also be noted that the amended and new conditions made by the Commission were favorable to the LMCHD community and ensuring the continuation of future resources being directed to the betterment of the health and well-being of the LMCHD community. The amended condition to change the composition of the advisory committee is intended to have more community, and fewer County, members on it. The added condition to restrict the proceeds from a sale of District assets is intended to be in furtherance of the District's health care needs by requiring that the proceeds be spent within the District. The other additional condition similarly is intended to require the County to spend most of the property taxes received from the District on health care related services within the District's boundaries and to limit the amount spent on administrative expenses.

Further, while LAFCO conducted a fair and open hearing on September 12, 2018, with appropriate public notice and an opportunity to be heard, LAFCO will also be conducting

another public hearing for the Request for Reconsideration. During the public hearing on the District's request for reconsideration, District, the public, and others will have an opportunity to address the Commission on its approval of the LMCHD dissolution, including providing any comments or suggested modifications to the amended or additional conditions. It is staff's opinion that all due process and other hearing requirements have been satisfied.

2. Facts That the District Claim Warrant Reconsideration

- a. **District's Comments/Concerns Regarding Future Sale and/or Development of LMCHD Owned Property and Related Issues** - The District's letter references an October 24, 2017 meeting of the LMCHD's Outreach Committee, during which a local developer, Dr. Justin Tin, expressed interest in purchasing a portion of LMCHD owned property for residential development. The District indicates that Janis Glover, spouse of Commissioner Glover, whom the District indicates is a real estate agent, accompanied Dr. Tin to the meeting. As noted in the letter, the District did not appear interested in selling District-owned land.

The District also notes that on November 7, 2017, approximately two weeks following the District's October 24th committee meeting, the County adopted a resolution of application to LAFCO to dissolve LMCHD. The District raises a question concerning the role of Janis Glover as a real estate agent, and possible economic interest in the transaction proposed by Dr. Tin. However, the District notes that it reviewed Commissioner Glover's Form 700 and found no income from Dr. Tin.

Response: Regarding the October 2017 LMCHD Outreach Committee meeting, LAFCO staff currently has no information regarding the real estate matter other than what is presented in the District's letter. Presently, this does not appear to be a LAFCO issue, and LAFCO staff does not believe that the meeting has any direct bearing on the LAFCO decision to approve dissolution of LMCHD.

- b. **District's Comments/Concerns Relating to Commissioner Glover's Role in LAFCO's Action to Add a Condition Relating to Future Sale of the PHC** - The District states in its letter that it is not alleging fraud or a conflict of interest at this time. Rather, the District states that it believes certain facts warrant an investigation. The letter implies that Commissioner Glover may be anticipating income from the sale of District-owned property and that, therefore, he may have had a financial interest in the dissolution application. The District also appears to imply that the County Board of Supervisors and/or Commissioner Glover had financial motives because the County acted soon after the District's Outreach Committee meeting in October 2017 to submit the dissolution application to LAFCO. As noted above, one of the new conditions added by the Commission relates to the restriction of the proceeds by the County if the County sells the PHC. The District claims that District representatives who attended the LAFCO meeting on September 12, 2018, recall that Commissioner Glover seconded the motion that considered the possibility that the building that houses the PHC or the land around it (that is currently owned by the District) might be sold in the future. Because the motion itself contemplates that the land might be sold, and because Commissioner Glover's wife appeared at a District Committee meeting two weeks before the dissolution proceedings were initiated by the County, the District is questioning Commissioner Glover's motives for seconding this motion.

Response - On September 12, 2018, the Commission approved the dissolution of LMCHD. During the LAFCO public hearing and Commission deliberations, the Commission added a condition to the resolution specifying that future proceeds derived from any sale, transfer, development or reuse of the PHC would be directed to healthcare related services and programs within the LMCHD community. The LAFCO record shows that Commissioner Tatzin suggested adding this condition, which was supported by the full Commission. There was no specific motion or second to a motion relating to this added condition. Instead, the Commission approved one final action (with a motion and second following the conclusion of Commissioner deliberations) to approve Option 1 to dissolve the LMCHD with specific terms and conditions.

Further, the future sale of the PHC is entirely speculative given its current use and value to the community. Since 1998, the District has leased the hospital building to the County. During the term of the lease, the County has made significant capital improvements in excess of \$24 million to the PHC during the term of the lease. Today, the PHC houses the County's largest health clinic, with over 100,000 patient visits per year. Neither the County nor the District have provided LAFCO with any information that the County is interested in selling the facility should it become the successor agency to the LMCHD.

- c. **District's Comments/Concerns Relating to the District's Ongoing Investigation and Indication There Are New or Different Facts** – As indicated in the District's letter, on September 21, 2018, the District made a Public Records Act (PRA) request to the County and is seeking copies of all correspondence between the County and Dr. Tin. The County indicates that its response will involve examining a voluminous amount of records, and that the County will respond to the request by October 15, 2018. The District indicates in its letter of October 12th that because it has not yet received the documents, and in order to allow the District reasonable time to pursue its inquiry, it asks that the Commission schedule reconsideration at a meeting not less than 30 days from today.

The District indicates that it is not alleging the existence of fraud or a conflict of interest at this time; it simply contends that circumstances warrant an investigation. The District further states that the appearance of a potential conflict should be of equal concern to LAFCO. Finally, the District believes that this information represents new or different facts that could not have been presented previously within the meaning of GC section 56895.

Response - Regarding the PRA request, we understand that on September 21, 2018, the District submitted a PRA request to the County. On October 2, 2018, County staff sent a letter to the District requesting clarification regarding Dr. Tin's interactions with the County. Subsequently, on October 15th, County staff transmitted to the District a partial response to the PRA request, and reiterated the County's prior request for clarification regarding Dr. Tin. On October 17th, the County received a letter from the District's special counsel clarifying the District's request regarding Dr. Tin. Now that the County has received clarification, LAFCO staff understands that the County is preparing a supplemental response to the District.

Based on all of the information submitted in the District's letter requesting reconsideration, it does not appear to LAFCO staff that the District provided new or different facts that could not have been presented previously and are claimed to warrant reconsideration

pursuant to GC section 56895. The District's Outreach Committee meeting occurred on October 24, 2017. The District's letter states that "since then," the District has been concerned about the potential conflict of interest. If the District believed that Commissioner Glover might have had a conflict, the District had between October 25, 2017 and the Commission's public hearing on September 12, 2018 to raise the issue, ask additional questions of Commissioner Glover or the County, and conduct an investigation into the facts. Any of the facts about that meeting, or the District's concerns about a potential conflict of interest, could have been raised to the Commission prior to or during the September 12 public hearing. The same concerns could also have been raised to the County as the applicant or could have been raised (but were not raised) by the District in its written comments to the Commission.

The District has not provided any evidence that Commissioner Glover's spouse (and by extension Commissioner Glover) would receive any income from approving the County's dissolution application. Nor has the District provided any information that Commissioner Glover's spouse is working for a party that may be interested in purchasing the property. Additionally, there is no evidence in the record that the PHC would be sold by either the District or the County. Neither has the District explained why it could not have done any of the additional investigation into these facts prior to the September 12, 2018 meeting and seems to instead suggest that Commissioner Glover's seconding of a non-existent motion regarding the sale of the District's property constitutes a new fact warranting reconsideration.

Thus, LAFCO staff does not believe that the information relating to the October 24, 2017 LMCHD Outreach Committee meeting constitutes "new or different facts that could not have been presented previously are claimed to warrant the reconsideration" per GC section 56895.

Finally, GC section 56895 states that a request for reconsideration should provide for the specific modification to the resolution. Here, the District instead appears to be asking the Commission to take one of four possible actions, which would have the effect of either denying the dissolution application or postponing the proceedings: (1) rescind Commission Resolutions No. 17-13A and 17-13B; (2) postpone the Commission's consideration of the District's reconsideration request for at least 30 days so the District can engage in additional fact-finding; (3) take the position that Resolution No. 17-13B has not yet been adopted by the Commission and postpone the final adoption of Resolution No. 17-13B until certain factual inquiries can be made into a potential conflict of interest; and (4) to not dissolve the District. The District's rationale for the Commission to take any one of these actions is based on the purported need of the District and perhaps the Commission to conduct an additional investigation into the facts surrounding an October 2017 District Outreach Committee meeting.

3. **Objection to Premature Protest Proceedings and Availability of Amended LAFCO Resolution** – As previously noted, the District believes that LAFCO did not adopt its resolution on September 12, 2018 approving dissolution of LMCHD; therefore, LAFCO is precluded from taking certain actions including setting a protest hearing.

Response – Regarding the protest proceedings, and as noted above, the Commission's

September 12, 2018 approval of Option 1 included a number of actions, including adopting LAFCO Resolution 17-13B approving dissolution of LMCHD and setting forth the Commission's terms, conditions, findings and determinations. The record also indicates that the Commission Chair noted that the protest hearing would proceed. Thus, LAFCO staff was fully within their authority to proceed with setting the protest hearing.

The District also notes that the LAFCO notice of the protest hearing, published on October 2, 2018, indicates that the LAFCO resolution approving dissolution of the LMCHD is available on the LAFCO website, but that the final, signed resolution was not available online.

It should be noted that the LAFCO public hearing notice also indicates that additional information is available through the LAFCO office. The draft resolution provided to the Commission on September 12, 2018 is, and has been, available on the LAFCO website. The amended resolution is currently available through the LAFCO office and will be included, and posted on the LAFCO website, in conjunction with the November 14, 2018 LAFCO meeting agenda packet.

OPTIONS FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted during the public hearing, the Commission should consider taking one of the following actions:

Option 1 **DISAPPROVE** the request for reconsideration and proceed with the protest hearing as currently scheduled for November 30, 2018.

If the Commission believes that the request for reconsideration does not meet the statutory requirements under GC section 56895, the Commission should disapprove the request for reconsideration. If the Commission disapproves the request, it shall not adopt a new resolution making determinations. The September 12, 2018 resolution, as adopted by the Commission with the amended condition and two additional conditions, will remain in effect, and the reconsideration process will be complete. No further reconsideration of the September 12, 2018 decision would be authorized under GC section 56895. The protest hearing would proceed as scheduled on November 30, 2018, and Commission staff would provide information to the Commission about the protest hearing at the Commission's December 2018 meeting. A resolution disapproving the request for reconsideration is provided as Attachment 3.

Option 2 **DISAPPROVE** the request for reconsideration, similar to Option 1, but direct LAFCO staff to continue the November 30, 2018 protest hearing to a date no later than January 29, 2019. The law allows the protest hearing to be continued for up to 60 days, and January 29, 2019, would allow for the maximum amount of time LAFCO can continue the protest proceedings. A resolution disapproving the request for reconsideration but directing staff to continue the protest hearing is provided as Attachment 4.

Option 3 **APPROVE** the request for reconsideration

- A. This option has two parts. The Commission may approve the request for dissolution if the Commission believes that the request for reconsideration meets the statutory requirements, and presents new or different facts that could not have been presented

previously to the Commission. Upon approving the request for reconsideration, the Commission would then consider the merits of the reconsideration request. It could do that during the November 14, 2018 public hearing, or it could hear the request at a different time.

- B. If the Commission decides to approve the request for reconsideration and not order the LMCHD dissolution, the Commission would adopt a resolution making determinations that supersede the September 12, 2018 resolution but upholding the decision to dissolve the LMCHD. If the Commission decides to approve the request for reconsideration and rescind its September 12, 2018 decision, the Commission would adopt a new resolution rescinding LAFCO Resolutions 17-13A and 17-13B, which approved the zero SOI for the District and approved the dissolution of the District and made certain findings and determinations. This new resolution would be final pursuant to GC section 56895, and the dissolution proceedings would terminate. A resolution approving the request for reconsideration and rescinding the two previously approved resolution is provided as Attachment 5.

Option 4 **CONTINUE** this matter to December 12, 2018, if the Commission needs more information. If the Commission continues this matter to its December 2018 meeting, staff requests that the Commission direct staff to continue the protest hearing until a date no later than January 29, 2019.

Option 5 **RATIFY or READOPT the Resolutions.** Due to the concerns the District raised in its letter requesting reconsideration, the Commission could treat Resolution No. 17-13B as an item to be ratified or readopted during its November 14, 2018 Commission meeting. If the Commission does so, then the reconsideration period would begin anew as of November 14, 2018 rather than September 12, 2018. The District would then have an additional 30 days to submit another request for reconsideration. That request for reconsideration would similarly be required under GC section 56895 to state the new or different facts that could not have been presented to the Commission prior to the Commission's public hearing on the County's dissolution application. Additionally, however, the time to hold the protest hearing would also change. The Commission is not permitted under the law to hold the protest hearing within the 30-day time period for reconsideration. Commission staff would be required to renote the protest hearing for a different date, which would vacate the November 30, 2018 protest hearing. This would mean that the Commission could not consider any protests signed so far for the dissolution (GC section 57051). In other words, any person who has already signed a protest would be required to sign it again and submit it prior to the conclusion of the yet to be scheduled new protest hearing date. Further, pursuant to GC section 57002, the date of the protest hearing shall not be less than 21 days or more than 60 days after the protest hearing notice is given. Consequently, the time to gather signatures from voters and landowners may be as short as 21 days or as long as 60 days. (As noted above, the currently scheduled November 30, 2018 protest hearing provides the maximum amount of time allowed under CKH.) Thus, even though it appears that the District may be requesting this option, Commission staff believes this option is potentially detrimental to the District and to any registered voter or

landowner within the District who may have already signed a protest; thus, staff does not recommend it.

RECOMMENDED ACTION:

Approve Option 2. It is staff's opinion that Option 2 (a) determines that the District did not present new or different facts that could not have been presented to the Commission prior to the September 12, 2018 public hearing but (b) extends the protest hearing date in recognition of the District's concerns regarding the availability of the final resolution and the uncertainty the District appears to express about the applicable dates and deadlines for this application. Option 2 would provide the District with the maximum time permitted under the law to allow registered voters and landowners to submit protests to the Commission. It is staff's opinion that this option provides the most amount of time to the District and would provide the least amount of potential harm to the District. However, staff does not believe this option is required. If the Commission does not wish to extend the protest hearing, then staff recommends that the Commission adopt Option 1 denying the District's request for reconsideration and proceeding with the protest hearing on November 30, 2018.

Please contact the LAFCO office if you have any questions.

Sincerely,

Lou Ann Texeira
Executive Officer

Attachments:

- Attachment 1 – Government Code Section 56895
- Attachment 2 – Letter Requesting Reconsideration dated October 12, 2018 from Elizabeth M. Calcine, Attorney, Hensley Law Group Representing the LMCHD
- Attachment 3 – Resolution Disapproving the Request for Reconsideration
- Attachment 4 - Resolution Disapproving the Request for Reconsideration and Directing the Executive Officer to Continue the Protest Hearing to January 29, 2019
- Attachment 5 - Resolution Approving the Request for Reconsideration and Rescinding the Approvals of the Los Medanos Community Healthcare District Dissolution

Government Code Section 56895

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve with or without amendment, wholly, partially, or conditionally, or disapprove the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.

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October 12, 2018

Contra Costa Local Agency Formation Commission
c/o Lou Ann Texeira, Executive Officer
651 Pine Street, 6th Floor
Martinez, CA 94553

Re: Los Medanos Community Healthcare District's Request for Reconsideration - Resolution No. 17-13A and Resolution No. 17-13B

Dear Ms. Texeira:

Our firm serves as special legal counsel for the Los Medanos Community Healthcare District ("District"). We are submitting this request on the District's behalf to the Contra Costa Local Agency Formation Commission. The District hereby requests reconsideration of Resolution No. 17-13A ("Resolution of the Contra Costa County Agency Formation Commission Making Determinations and Adopting a Zero Sphere of Influence for Los Medanos Community Healthcare District") and Resolution No. 17-13B ("Resolution of the Contra Costa County Agency Formation Commission Making Determinations and Approving Dissolution of the Los Medanos Community Healthcare District") as considered by the Commission at its September 12, 2018 meeting. Specifically, the District requests that the Commission reconsider and ultimately rescind both resolutions. The District makes this request on procedural grounds and because the District has serious concerns regarding the potential for a conflict of interest on the part of County Supervisor/LAFCO Commissioner Federal Glover.

Procedural Objection

The District makes this request as of October 12, 2018 out of an abundance of caution. Government Code section 56895 requires a request for reconsideration to be filed "within 30 days of the adoption of the initial or superseding resolution by the commission making determinations." At its September 12, 2018 meeting, the Commission considered the various options presented by staff and ultimately agreed to dissolve the District with a number of additions and modifications consistent with the Commission's discussion. In announcing the final motion, the Commission chairperson stated that staff would "bring back final language" at a subsequent meeting.¹

Following that meeting, neither of the final Resolutions No. 17-13A nor No. 17-13B could be found on the Commission website. Further, in spite of our prior requests earlier this week to Commission staff and legal counsel for the final Resolution No. 17-13B, the final resolution was not provided. In fact, the final resolutions were not provided to the District until this morning, October 12, 2018, the date that Commission staff claims that the District's Request for Reconsideration is due.

Therefore, it appears that Commission staff acted outside the scope of the authority and direction given to them by the Commission in finalizing the resolutions this morning with three additional conditions rather than bringing "back the final language." Staff are bound by the Commission's motion and vote unless changed at a future meeting.

It also deprives the District of a fair hearing to be provided the final resolution revised by Commission staff on the same day that the Request for Reconsideration is due. The District has not had sufficient opportunity to review, comment, and provide testimony and other documentation regarding the three additional conditions because the language was not finalized at the September 12, 2018 meeting and was only made available this morning. A fair hearing requires, at a minimum, notice and an opportunity to be heard. Neither was provided here. The District reasonably expected, based on the September 12, 2018 motion and vote, that it would have an opportunity at a future meeting to comment on the three additional conditions. Consequently, we

¹ This is common practice--and appropriate--unless the precise modifications to a proposed resolution are read into the record verbatim, in which case the body has the final wording before it and can take a final action. No final wording was read into the record in this case.

do not believe the 30-day period has yet begun to run under any reasonable reading of Government Code section 56895.

Facts that Warrant Reconsideration

Government Code section 56895 requires that the request for reconsideration shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. The District requests that the Commission postpone the final adoption of the Resolution until the concerns discussed below can be adequately investigated. Further, the District requests that the Commission not dissolve the District.

At the October 24, 2017 meeting of the District's Outreach Committee, a local developer named Dr. Justin Tin addressed the Committee regarding his desire to purchase 2.4 acres of District-owned property on East Leland Avenue. He declared his desire to develop the property with housing and urged the District to sell or lease the property on a long-term basis.

Dr. Tin was accompanied at the Committee meeting by Janis Glover, the wife of Supervisor/LAFCO Commissioner Federal Glover, and by Pete Longmire, a Pittsburgh City Council member and past Executive Director of the District. We understand that Janis Glover is somehow affiliated with the City of Pittsburgh, but we also understand that she is a licensed real estate salesperson with an active practice which includes the Pittsburgh area.

District records reflect that District Board Member J. Vern Cromartie indicated at that meeting:

“There is lots of land near Los Medanos College – so rather than taking public land – I’m not a big fan of selling public land – because once you sell it you can’t claim more land – once it’s gone its gone & the public has no usage.”

The District did not sell or lease the property. Dr. Tin and Mrs. Glover never returned to the Board to follow up on the purchase. Instead, on November 7, 2017, just two weeks after the Committee meeting at which Dr. Tin, accompanied by Mrs.

Glover, urged the District to sell him the property, the County adopted a resolution of application initiating proceedings for the dissolution of the District. Since then, concerns have been raised that the District believes warrant further investigation into the possible connection between Dr. Tin and Supervisor Glover and/or his spouse.

The reason for Mrs. Glover accompanying Dr. Tin at the meeting are presently unknown to the District, but the District is investigating whether she was acting in her capacity as a real estate salesperson and had a potential economic interest in the transaction proposed by Dr. Tin--an economic interest that would be imputed to Supervisor/Commissioner Glover. We reviewed Supervisor/Commissioner Glover's Form 700 on file with the Fair Political Practices Commission to determine if he had any income from Dr. Tin, but his Form 700 showed no income even though we understand his wife is a real estate agent.

Further, at the Commission meeting on September 12, 2018, there was a motion that a new condition be added to the Resolution. The Condition as set forth in the revised resolution received this morning provides:

“Should there be any sale, transfer, redevelopment or reuse of the Pittsburg Health Center facility/property for use other than medical, health-related purposes, any profits, proceeds or new revenues generated from such sale, transfer, redevelopment or reuse shall be directed to healthcare related services/programs within the LMCHD community.”

District representatives who attended the meeting recall that it was Commissioner Glover who seconded this motion that considered the possibility that the building that houses the Pittsburg Health Center or the land around it (that is currently owned by the District) might be sold in the future. Because the motion itself contemplates that the land might be sold, and because Commissioner/Supervisor Glover's wife appeared at a District Committee meeting two weeks before the dissolution proceedings were initiated by the County, the District is questioning Commissioner Glover's motives for seconding this motion.

The District is currently in the process of attempting to obtain additional information. On September 21, 2018, a District representative made a Public Records Act (“PRA”) request to the County seeking copies of all correspondence between the

County and Justin Tin since January 1, 2016. By letter dated September 24, 2018, Timothy M. Ewell, Chief Assistant County Administrator, replied to the PRA request and indicated that a response could be anticipated on or before October 1, 2018. Subsequently, on October 1, 2018, Mr. Ewell emailed the District's representative and informed him that, because the request "involves examining a voluminous amount of separate and distinct records," the County must extend the time to respond to October 15, 2018. Because the District has not yet begun to receive the documents, and in order to allow the District a reasonable time to pursue its inquiry, we ask that the Commission schedule reconsideration of the resolutions at a meeting not less than 30 days from today. These are new or different facts that could not have been presented previously within the meaning of Government Code section 56895.

To be clear, the District is not alleging the existence of fraud or a conflict of interest at this time; it simply contends that the circumstances warrant an investigation. We trust that the appearance of a potential conflict is of equal concern to the Commission. Accordingly, the District requests reconsideration of the resolution and a reasonable time to conduct an independent investigation. We further urge the Commission to make inquiries of its own to preserve the integrity of this process.

Objection to Premature Protest Proceedings

We respectfully request that the protest proceedings which have been noticed for November 30, 2018 be postponed until after the Commission holds its hearing on the request for reconsideration as required by the Government Code. Government Code 57000 provides "*After adoption* of a resolution making determinations by the Commission pursuant to Part 3 (56650 et seq.), protest proceedings for a change of organization or reorganization ... shall be taken pursuant to this part. [Emphasis added.]" Further, Government Code Section 57002 states that the Commission is to set the proposal for hearing and give notice within 35 days following the adoption of the Commission's resolution making determinations and specifies that the hearing cannot be held prior to expiration of the reconsideration period in Government Code Section 56895(b). That section states that the request for reconsideration must be filed "within 30 days of the adoption of the original or superseding resolution making determinations."

Letter to Ms. Teixeira
October 12, 2018
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Further, we were informed that the Notice of Protest hearing was published on October 2, 2018. And in particular, that notice stated that:

“The dissolution was approved by LAFCO on September 12, 2018 subject to various terms and conditions as specified in the LAFCO resolution which is available online at <http://contracostalafco.org/>.”

However, this resolution could not be found on the Contra Costa LAFCO website. The resolution with the three additional conditions discussed on September 12, 2018 could not be found there or anywhere until it was provided today to the District. An interested party cannot be expected to lodge a written protest of a resolution that has not yet been made publicly available. Therefore, the Notice of Protest was legally deficient at least insofar as it gave notice of a decision that had not yet been finalized or made public for inspection and consideration.

For the reasons listed above, we respectfully request that these protest proceedings be postponed until after the resolution, if any, is adopted following the reconsideration.

If you have any questions regarding the above, please do not hesitate to contact me at 626-437-3865.

Very truly yours,



Elizabeth M. Calciano

cc: President J. Vern Cromartie and District Board Members
Iteka Greene, Interim Executive Director

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
DISAPPROVING THE REQUEST FOR RECONSIDERATION RELATING TO THE
DISSOLUTION OF THE LOS MEDANOS COMMUNITY HEALTHCARE DISTRICT**

WHEREAS, on September 12, 2018, the Contra Costa Local Agency Formation Commission (LAFCO), after conducting a duly noticed public hearing, adopted Resolution No. 17-13A Approving a Zero Sphere of Influence for the Los Medanos Community Healthcare District (LMCHD), and adopted Resolution No. 17-13B Approving the Dissolution of the LMCHD subject to various terms and conditions; and

WHEREAS, Government Code section 56895 allows any party to request reconsideration of the Commission’s resolution making determinations under specified conditions; and

WHEREAS, at the time and in the manner required by law the Executive Officer gave notice of the Commission’s consideration of the proposal; and

WHEREAS, a request for reconsideration was filed on October 12, 2018 by the Hensley Law Group on behalf of the LMCHD; and

WHEREAS, the request is that the Commission take one of a number of different actions, each of which would either reverse the Commission’s decision to dissolve the LMCHD or postpone the Commission’s time to make a decision; and

WHEREAS, a public hearing on the matter of reconsideration was held on November 14, 2018, at which time, the Executive Officer presented the report for this reconsideration, and the Commission heard and received all oral and written comments; and

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED by the Contra Costa LAFCO that the Commission finds and determines that the request for reconsideration set forth no new or different facts that could not have been presented previously to the Commission at the time LAFCO made its decision to dissolve the LMCHD, as is required by Government Code section 56895, and the request also did not ask for any specific modifications to a LAFCO-approved resolution.

The request for reconsideration is hereby disapproved, the previously approved LAFCO resolutions 17-13A and 17-13B hereby remain in effect, and LAFCO will proceed with the LMCHD dissolution protest hearing as currently scheduled for November 30, 2018.

PASSED AND ADOPTED THIS 14th day of November 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MICHAEL R. MCGILL, 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.

Dated: November 14, 2018

Lou Ann Texeira, Executive Officer

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
DISAPPROVING THE REQUEST FOR RECONSIDERATION RELATING TO THE
DISSOLUTION OF THE LOS MEDANOS COMMUNITY HEALTHCARE DISTRICT AND
DIRECTING THE EXECUTIVE OFFICER TO CONTINUE THE PROTEST HEARING TO
JANAURY 29, 2019**

WHEREAS, on September 12, 2018, the Contra Costa Local Agency Formation Commission (LAFCO), after conducting a duly noticed public hearing, adopted Resolution No. 17-13A approving a Zero Sphere of Influence for the Los Medanos Community Healthcare District (LMCHD), and adopted Resolution No. 17-13B Approving the Dissolution of the LMCHD subject to various terms and conditions; and

WHEREAS, Government Code section 56895 allows any party to request reconsideration of the Commission’s resolution making determinations under specified conditions; and

WHEREAS, at the time and in the manner required by law the Executive Officer gave notice of the Commission’s consideration of the proposal; and

WHEREAS, a request for reconsideration was filed on October 12, 2018 by the Hensley Law Group on behalf of the LMCHD; and

WHEREAS, the request is that the Commission take one of a number of different actions, each of which would either reverse the Commission’s decision to dissolve the LMCHD or postpone the Commission’s time to make a decision; and

WHEREAS, a public hearing on the matter of reconsideration was held on November 14, 2018; and

WHEREAS, the Executive Officer presented the report for this reconsideration and public testimony was considered.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED by the Contra Costa LAFCO at a public hearing on November 14, 2018 that:

The request does not provide new or different information that could not have been presented previously to the Commission at the time LAFCO made its decision to dissolve the LMCHD, as is required by Government Code section 56895, and the request also did not ask for any specific modifications to a LAFCO-approved resolution.

The request for reconsideration is hereby disapproved, and the previously approved LAFCO resolutions 17-13A and 17-13B shall remain in effect. Further, the Commission hereby directs the Executive Officer to continue the protest hearing from November 30, 2018 to January 29, 2019, the maximum amount of time allowed under the law for a continuance of the protest hearing.

PASSED AND ADOPTED THIS 14th day of November 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MICHAEL R. MCGILL, 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.

Dated: November 14, 2018

Lou Ann Texeira, Executive Officer

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
APPROVING THE REQUEST FOR RECONSIDERATION RELATING TO THE
DISSOLUTION OF THE LOS MEDANOS COMMUNITY HEALTHCARE DISTRICT AND
RESCINDING COMMISSION RESOLUTIONS 17-13A AND 17-13B**

WHEREAS, on September 12, 2018, the Contra Costa Local Agency Formation Commission (LAFCO), after conducting a duly noticed public hearing, adopted Resolution No. 17-13A approving a Zero Sphere of Influence for the Los Medanos Community Healthcare District (LMCHD), and adopted Resolution No. 17-13B Approving the Dissolution of the LMCHD subject to various terms and conditions; and

WHEREAS, Government Code section 56895 allows any party to request reconsideration of the Commission’s resolution making determinations under specified conditions; and

WHEREAS, at the time and in the manner required by law the Executive Officer gave notice of the Commission’s consideration of the proposal; and

WHEREAS, a request for reconsideration was filed on October 12, 2018 by the Hensley Law Group on behalf of the LMCHD; and

WHEREAS, the request is that the Commission take one of a number of different actions, each of which would either reverse the Commission’s decision to dissolve the LMCHD or postpone the Commission’s time to make a decision; and

WHEREAS, a public hearing on the matter of reconsideration was held on November 14, 2018; and

WHEREAS, the Executive Officer presented the report for this reconsideration and public testimony was considered.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED by the Contra Costa LAFCO at a public hearing on November 14, 2018 that:

The request for reconsideration is based on new or different information that could not have been presented previously to the Commission, pursuant to Government Code section 56895.

The Commission has considered the new or different information and the request for reconsideration and finds that the dissolution of the LMCHD should not proceed.

The previously approved LAFCO resolutions 17-13A and 17-13B are hereby rescinded and superseded in their entirety by this resolution, and the dissolution proceedings are hereby terminated.

PASSED AND ADOPTED THIS 14th day of November 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MICHAEL R. MCGILL, 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.

Dated: November 14, 2018

Lou Ann Texeira, Executive Officer