



MINUTES
WEDNESDAY, AUGUST 1, 2012

SPECIAL MEETING (CLOSED SESSION)

CALL TO ORDER

Chairperson Pete Constant called the meeting to order at 1:00 p.m.

1. ROLL CALL

The following Commissioners were present:

- **Chairperson Pete Constant** (left at 2:50 p.m.)
- **Commissioner Margaret Abe-Koga**
- **Commissioner Susan Vicklund Wilson**
- **Alternate Commissioner Terry Trumbull**

The following were absent:

- **Commissioner Liz Kniss** (arrived at 1:03 p.m.)
- **Commissioner Mike Wasserman** (arrived at 1:02 p.m.)
- **Alternate Commissioner Cat Tucker**
- **Alternate Commissioner Sam Liccardo**
- **Alternate Commissioner George Shirakawa**

The following staff members were present:

- **LAFCO Executive Officer Neelima Palacherla**
- **LAFCO Analyst Dunia Noel**
- **LAFCO Counsel Mala Subramanian**

2. CONFERENCE WITH LEGAL COUNSEL

The Commission adjourned to Closed Session at 1:02 p.m.

3. ADJOURNMENT

The Commission adjourned to a brief recess at 1:22 p.m. to the time certain regular meeting at 1:30 p.m.

REGULAR MEETING

CALL TO ORDER

Chairperson Constant called the meeting to order at 1:30 p.m. and announced that there was no report from the Closed Session.

1. ROLL CALL

The attendance roll was updated to include Commissioners Kniss and Wasserman.

2. **PUBLIC COMMENT**

There was no public comment.

3. **APPROVE MINUTES OF MAY 30, 2012 LAFCO MEETING**

The Commission approved the minutes of May 30, 2012 LAFCO meeting.

Motion: Margaret Abe-Koga

Second: Susan Vicklund Wilson

MOTION PASSED

AYES: Pete Constant, Margaret Abe-Koga, Mike Wasserman, Liz Kniss, Susan Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: None

4. **WEST VALLEY SANITATION DISTRICT 2012-02 (MIREVAL ROAD)**

The Commission adopted **Resolution No. 2012-04**, approving the annexation to West Valley Sanitation District of approximately 3.335 acres (APNs 532-25-023 and 532-25-025) located at 17560 Mireval Road outside of the Town of Los Gatos (West Valley Sanitation District 2012-02). Said Resolution, by reference hereto, is made part of these minutes.

Motion: Margaret Abe-Koga

Second: Susan Vicklund Wilson

MOTION PASSED

AYES: Pete Constant, Margaret Abe-Koga, Mike Wasserman, Liz Kniss, Susan Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: None

5. **EL CAMINO HOSPITAL DISTRICT AUDIT AND SERVICE REVIEW**

Ms. Palacherla presented the staff report and informed that prior to the meeting, the commissioners were provided with copies of ECHD's comment letter dated July 30, 2012. She stated that in the letter, ECHD requested that the recommendations in the Revised Draft Report (prepared by the LAFCO consultant) be revised to mirror the recommendations made by LAFCO staff in the staff report. Ms Palacherla explained that the requested changes are not intended to correct factual errors and that the recommendations in the Revised Draft Report were prepared by LAFCO's consultant who was hired by LAFCO to prepare an independent audit of the district. She advised against revising the consultant's Revised Draft Report. She noted that LAFCO in making its decision would have the ability to consider all of the information presented including the consultant's Revised Draft Report, the ECHD's comments, public comments and LAFCO staff recommendations. She informed that LAFCO's consultant, Steve Foti with Harvey Rose Associates is available to answer questions.

This being the time and place for the public hearing, **Chairperson Constant** declared the public hearing open.

Wes Alles, ECHD Board member, stated that he was pleased with the positive outcome of the audit which found that district funds were not used in the purchase or operation of the Los Gatos hospital. He assured LAFCO of the ECHD's commitment to implement the Revised Draft Report's recommendations regarding improving transparency and

accountability. He stated that the ECHD hired KPMG to perform an independent analysis. He indicated that the KPMG report found that the ECHD provides more community benefit compared to other districts, that the Los Gatos hospital benefits the ECHD residents and that the ECHD is transparent in its Board activities and community benefit funds allocation process. He requested that the Commission make changes to the Revised Draft Report as suggested in Exhibit 1 of the ECHD's letter dated July 30, 2012 and that the Commission approve staff recommendations 1 through 9.

David Reeder, ECHD Board member, indicated that until recently there had not been much public interest in the ECHD Board meetings or in reviewing its funding details and that the district is open to change given the current interest. He explained that the ECHD dedicates \$5 million in tax money to provide community benefits and the Corporation provides \$45 million in uncompensated care each year. He added that as a member of the ECHD Board, he voted for the acquisition of the Los Gatos hospital campus as he was convinced that ECHD funds would not be used and because it would benefit the district residents. He described how the Los Gatos hospital would generate higher volume and result in higher quality at the Mountain View hospital.

Bill James, a resident of the district and an ECHD Board candidate, thanked the commission for the service review and audit. He suggested that the Commission apply the transparency recommendations to the Corporation and request the Corporation to make the same changes as the ECHD. He explained that while the Corporation has a separate legal existence, it is not a separate entity and exists only because of the district. He recommended that the Corporation should be required to delineate its expenditures in a detailed manner and explain its intentions so that members of the community can participate in decisions such as the acquisition of the Los Gatos Hospital. He noted that he is opposed to the dissolution of the district and urged the Commission to not consider the dissolution option as it would be contrary to the transparency requirements in the report.

Kevin Mann, Regional Political Organizer for SEIU-United Health Care Workers West, expressed his support for the recommendations in the service review and audit report and his opposition to dissolving the district. He noted that the ECHD does not operate transparently, as a public entity should. He added that it does not make its budget available well in advance of meetings and does not allow adequate time for public comments at the meeting. He urged the Commission to support the recommendations in the audit and request improvements in the district's governance, transparency and public accountability.

Chairperson Constant determined that there are no members of the public who wished to speak on the item and ordered the public hearing closed.

Commissioner Wasserman reported that he met with the ECHD Board members and staff after the May 30, 2012 LAFCO meeting; **Commissioner Kniss** likewise reported that she had met with the ECHD Board members and staff, and SEIU representatives; **Commissioner Abe-Koga** announced that she had met with the ECHD Board members and staff, and representatives from SEIU and various non-profits funded by the District.

In response to the an inquiry by **Commissioner Wasserman**, Ms. Subramanian advised that action items “a” through “i” of the agenda correspond to items #1 through #9 of the staff report.

Commissioner Wasserman explained that the service review has helped resolve the issues surrounding the acquisition of the hospital in Los Gatos but has raised other issues regarding transparency and public accountability. He complimented the ECHD for updating its website. He added that ECHD is not being singled out and that other special districts are scheduled to be reviewed soon. **Commissioner Kniss** stated that she appreciates that the audit resolves the original issue regarding the Los Gatos hospital. She noted that while attending the CALAFCO University class on health care districts, she observed that the ECHD is in a better position when compared to others.

Commissioner Abe-Koga thanked staff and Harvey Rose Associates for their work on the service review report. As a LAFCO member living in the district, she noted her appreciation for the high quality service that the hospital provides. She stated that early on she found it difficult to find information on the ECHD’s website and that she appreciates the progress made. She explained that she does not have a concern that the staff recommendation is different from the recommendation in the Harvey Rose report and stated that the Harvey Rose report should not be revised as it is the expert opinion. She added that she was satisfied with the process and that she is trying to find ways for the district to continue to improve on transparency and ensure that the residents of the district are the top priority for the district and the corporation. **Commissioner Wilson** concurred with Commissioner Abe-Koga regarding the Harvey Rose report and stated that she viewed the Harvey Rose report as a stand-alone document that would serve as a tool in the decision making process. She noted that while El Camino is a great hospital, questions regarding whether the district is governed correctly, whether it is serving the purpose and whether the taxpayer dollars are being used to provide services outside the district are addressed in the service review. She expressed appreciation for the changes that ECHD has made and stated that she would support the staff report but was unwilling to make changes to the Harvey Rose report.

In response to an inquiry by **Commissioner Kniss**, Mr. Alles described how the ECHD community benefit grants are planned and distributed and the requirement for grantees to provide measurement tools to assess the program’s effectiveness.

Commissioner Constant informed that he also attended the CALAFCO University class on health care districts. He expressed appreciation that the ECHD has made improvements to their website to make a distinction between the district and the corporation without waiting for LAFCO action and requested that they continue implementing needed changes. He noted that LAFCO’s role in the oversight of special districts is crucial.

The Commission determined that the Revised Draft Report which includes a sphere of influence update, and the recommendations of the staff report are exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to the following sections of the State CEQA Guidelines: §15306 Class 6; §15061(b)(3) General Rule; and §15378(b)(5).

Motion: Liz Kniss

Second: Mike Wasserman

MOTION PASSED

AYES: Pete Constant, Margaret Abe-Koga, Mike Wasserman, Susan Vicklund Wilson, Liz Kniss

NOES: None ABSTAIN: None ABSENT: None

Commissioner Wilson suggested that the Commission act on staff recommendations #2 and #3. She stated that the Revised Draft Report is an independent report and in order to maintain its integrity, the Commission should receive and file it without any further revisions. At the request of **Commissioner Kniss**, **Commissioner Wilson** restated the motion to act only on recommendation #2.

The Commission accepted comments and considered requests for revisions to the Revised Draft Report.

Motion: Susan Vicklund Wilson

Second: Margaret Abe-Koga

MOTION PASSED

AYES: Pete Constant, Margaret Abe-Koga, Mike Wasserman, Susan Vicklund Wilson, Liz Kniss

NOES: None ABSTAIN: None ABSENT: None

Commissioners Wasserman proposed that staff recommendations #3, #4, #5, and #6 be considered together and approved. **Commissioner Kniss** proposed to add the revisions requested in Exhibit 1 of the ECHD's July 30, 2012 letter to the motion. **Commissioner Abe-Koga** stated that ECHD's comment letter has been accepted in the prior item. A brief discussion ensued on the motion. **Commissioner Wasserman** clarified his motion at the request of the Chairperson. Ms. Subramanian advised that the Commission may explicitly accept the ECHD's July 30, 2012 comment letter and accept the Revised Draft Report without revisions. Following a discussion on whether or not to amend the Revised Draft Report as requested in the ECHD's comment letter, the Commission reached consensus to act only on staff recommendation #3 at this point, and proposed to accept the Revised Draft Report without any revision, and to accept the ECHD's comment letter.

The Commission accepted the Revised Draft Report, without revisions, and accepted Exhibit 1 in ECHD's July 30, 2012 letter.

Motion: Mike Wasserman

Second: Liz Kniss

MOTION PASSED

AYES: Pete Constant, Margaret Abe-Koga, Mike Wasserman, Susan Vicklund Wilson, Liz Kniss

NOES: None ABSTAIN: None ABSENT: None

Commissioner Wasserman and **Kniss** proposed to approve staff recommendations #4 through #9 with Attachment B, and to include revisions to the Revised Draft Report proposed in Exhibit 1. Ms. Palacherla advised that Exhibit 1 includes revisions recommended by the ECHD to the Revised Draft Report and is not part of the staff

report. Ms. Subramanian advised that #1 in Exhibit 1 calls for revisions to the Revised Draft Report (to remove any references to dissolution) and #2 in Exhibit 1 simply reiterates staff recommendations. **Commissioner Abe-Koga** expressed opposition to the motion stating that the report would be revised if Exhibit 1 is included. **Commissioner Wilson** added that the revisions being proposed by the ECHD in Exhibit 1 are unnecessary since dissolution is not being recommended by staff and the Commission is not considering that option and that there is no need for the report to mirror the staff recommendation as it is a standalone report. Following considerable discussion amongst the commissioners and clarification from staff, Commissioner Wasserman withdrew his motion because he did not intend to modify the consultant's report and because the recommendations in Exhibit 1 are the same as staff recommendations. **Commissioner Wilson** proposed to approve Recommendations #4 through #9, as stated in the staff report. In response to an inquiry by **Commissioner Kniss**, Ms. Subramanian clarified that a resolution would be prepared reflecting the Commission's actions which are different from the recommendations in the Revised Draft Report and that the Revised Draft Report must be reviewed together with the resolution in order to obtain a complete picture of the Commission's actions.

The Commission:

- Adopted the service review determinations pursuant to Government Code §56430 as included in the Revised Draft Report.
- Retained the existing sphere of influence (SOI) for the ECHD. Adopt the SOI determinations pursuant to Government Code §56425 as included in the Revised Draft Report.
- Requested that the ECHD implement improvements in governance, transparency and public accountability as recommended in the Revised Draft Report and included in Attachment B to the staff report.
- Requested that the ECHD provide a report back to LAFCO within 12 months regarding implementation of the above improvements. At the end of the 12 month period, LAFCO shall reevaluate the ECHD and its SOI, and consider the need for any further changes or follow-up actions.
- Requested that the ECHD clearly demonstrate to LAFCO that no ECHD funds will be used if the El Camino Hospital Corporation plans to purchase property outside of the ECHD's boundary and provide an explanation for how the purchase will benefit the ECHD since the ECHD's contributions to the Corporation over the years have benefited the Corporation's reserves and financial standing.
- Directed staff to seek the State Attorney General's opinion on the applicability of the Gann Limit to Health Care Districts.

Motion: Susan Vicklund Wilson

Second: Mike Wasserman

MOTION PASSED

AYES: Pete Constant, Margaret Abe-Koga, Mike Wasserman, Susan Vicklund Wilson

NOES: Liz Kniss

ABSTAIN: None

ABSENT: None

Commissioner Kniss explained that her opposition to the action is because of lack of clarity.

6. DRAFT MISSION STATEMENT AND PRIORITY GOALS

Dunia Noel, LAFCO Analyst, presented the staff report.

Douglas Muirhead, a resident of Morgan Hill, recommended that the LAFCO reports be made more accessible to the public, that LAFCO service review reports be made available in the public libraries, and that staff present LAFCO service reviews and other projects at city council meetings to encourage the cities' participation. **Commissioner Wilson** informed that staff would contact Mr. Muirhead for more information.

Julie Hutcheson, Committee for Green Foothills, stated that LAFCO decisions impact the quality of life in the County and expressed support for the draft mission statement and priority goals.

The Commission adopted the draft mission statement and priority goals for LAFCO.

Motion: Liz Kniss

Second: Margaret Abe-Koga

MOTION PASSED

AYES: Margaret Abe-Koga, Mike Wasserman, Liz Kniss, Susan Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

7. ANNUAL REPORT

The Commission accepted the 2011-2012 Annual Report.

Motion: Liz Kniss

Second: Margaret Abe-Koga

MOTION PASSED

AYES: Margaret Abe-Koga, Mike Wasserman, Liz Kniss, Susan Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

8. EXECUTIVE OFFICER'S REPORT

The Commission noted items 8.1 through 8.5.

8.6 NOMINATIONS TO THE CALAFCO BOARD OF DIRECTORS

The Commission directed staff to nominate Alternate Commissioner George Shirakawa to the CALAFCO Board of Directors if he is interested.

Motion: Susan Vicklund Wilson

Second: Mike Wasserman

MOTION PASSED

AYES: Margaret Abe-Koga, Mike Wasserman, Susan Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Pete Constant, Liz Kniss

8.7 DESIGNATE VOTING DELEGATE AND ALTERNATE FOR SANTA CLARA LAFCO

The Commission designated Commissioner Susan Vicklund Wilson as the voting delegate and Chairperson Pete Constant as the alternate voting delegate to the 2012 CALAFCO Board of Directors elections.

Motion: Mike Wasserman

Second: Liz Kniss

MOTION PASSED

AYES: Margaret Abe-Koga, Mike Wasserman, Liz Kniss, Susan Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

9. PENDING APPLICATIONS / UPCOMING PROJECTS

There were none.

10. COMMISSIONER REPORTS

There were none.

11. NEWSPAPER ARTICLES / NEWSLETTERS

There were none.

12. WRITTEN CORRESPONDENCE: LETTER FROM THE PUBLIC INTEGRITY UNIT OF THE SANTA CLARA COUNTY DISTRICT ATTORNEY'S OFFICE, REGARDING THE SOUTH SANTA CLARA VALLEY MEMORIAL DISTRICT'S GOVERNANCE PROBLEMS

In response to an inquiry by **Commissioner Wilson**, Ms. Palacherla informed that the South Santa Clara Valley Memorial District is included in the first phase of the special districts service review. **Acting Chairperson Wasserman** noted that LAFCO's service reviews will help special districts to be more transparent and document that they have bylaws and that they are following the bylaws and the Brown Act.

13. ADJOURN

The meeting was adjourned at 3:02 p.m. to the next meeting on Wednesday, October 10, 2012 in the Board Meeting Chambers, County Government Center, 70 West Hedding Street, San Jose, California.

Approved:

Pete Constant, Chairperson

Local Agency Formation Commission of Santa Clara County

By: _____

Emmanuel Abello, LAFCO Clerk