Consultant's Response to Letters from the El Camino Hospital District Board of Directors and from Andrew S. Sabey of Cox, Castle Nicholson

Reference	Statement in District Correspondence	Response
	June 22, 2012 Letter from District Board of Directors	
B.1	The District is not in a position to limit discretion and commit that all future tax revenues will only be spent on community benefits and not on other expenditures allowed under State law.	Partially agree. Current Board cannot commit future boards. Intent is for the Board to establish a policy/practice that would result in greater commitment to community benefits.
C.1	Disagrees with suggestion that District community benefits funds are not already spent on programs that target and benefit District residents.	Disagree. With the exception of certain community benefit grants, such as those to schools within the District, grants are provided to organizations that offer services to the Hospital's broader patient population. District does not maintain data that demonstrates that District residents receive benefits in proportion to their asset or tax contribution.
C.2	Disagrees with the implication that the District must establish some type of "wall" that would preclude community residents who may not live in the District from receiving any community benefits.	Misrepresents the report. No suggestion that a "wall" be established. See response to C.1.
G.1	Strongly disagrees with the Report's mandates described in Recommendation 2, that if the items described in Recommendation 1 are not implemented within 12 to 18 months after acceptance of the Report -- or if the Hospital Corporation continues to purchase property outside of the District Boundaries -- the District must give up control of the Hospital Corporation or face dissolution	Misrepresents the report. No "mandate" suggested or included in the Report. However, if the District does not improve transparency and accountability, LAFCo may consider whether there is a basis for dissolution of the District. See LAFCo attorney's response letter.
Pg. 5/Last Para	There are other recommendations that the District is willing to consider . . . If the mandates are removed from the Report.	Conditional agreement to proceed toward recommended changes only if "mandates" are removed indicates lack of cooperation with intent of the recommendations and suggests that the District may be unwilling to improve transparency and accountability.

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	May 29, 2012 Letter from Gregory B. Caligari	
Pg. 2, Bullet 1 Page 2, Item 1	The Report fails to present information in a neutral manner. The report advocates rather than discloses.	Disagree: Accusation of auditor bias instead of recognition of auditor independence.
Pg. 2, Bullet 1	Omits information that demonstrates the benefits the community derives from the District.	Disagree. Relevant information fully discussed, including benefits of having a hospital geographically located in the District and community benefit program character. District unable to demonstrate degree of community benefit access for District residents.
Pg. 2, Bullet 2, Pg. 3, Item 2	Report ignores the clear an (sic) unambiguous language of State law when it implies that the District transfers to the Hospital Corporation may be unlawful. Implies that the District violated Health and Safety Code Requirements.	Mischaracterizes the report. Fully describes the District's opinion that it is exempt from State law that clearly and unambiguously requires voter approval prior to transferring 50% or more of net assets from the District to the Corporation. Report states that there is insufficient evidence demonstrating the District's position and questions "why the Legislature would exempt the District from such an important provision", but makes no recommendations in this regard.
Pg. 2, Bullet 3 Page 4, Item 3	Report ignores the corporate separateness of the District and the Hospital Corporation. The Report discounts the Corporate separateness of the District and the Hospital Corporation.	Mischaracterizes the report. Several references to the legal separateness of the entities. District ignores other recognized standards demonstrating organizational linkages, including financial reporting standards and public disclosure laws.
Pg. 2, Bullet 4 Page 4, Item 4	The Report places no value on the public control of the Mountain View Hospital. Mandate to change Corporate structure would decrease transparency, public accountability and efficiency.	Disagree. Report places high value on the public control of the Hospital, but believes such control is not well served as the Corporation moves toward a broader mission (e.g., purchase of the Los Gatos Hospital campus) that does not focus on the District's mission or services to District residents.

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Pg. 2, Bullet 5 Page 4, Item 5.a, 5.b, 5.c, 5.d	Proposed mandates are beyond LAFCo's authority. LAFCo is an agency with limited authority. Report proposes actions beyond LAFCo's authority. The Report asks LAFCo to become the District's manager. The Report would have LAFCo usurp the powers granted to a publically elected Board even though current operatios are authorized by law.	Disagree: No finding or determination for dissolution made and not a mandate. See response to District letter G.1.
Pg. 2, Bullet 5 Pg. 8, Item 5.e	Dissolution findings are unlawful and unwarrated. The Report's dissolution findings are unlawful and unwarranted.	Disagree: No finding or determination for dissolution made and not a mandate. See response to District letter G.1. Note that activities for moving toward dissolution would require separate study, as stated in revised report.

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	June 22, 2012 Letter from Andrew B. Sabey	
Pg. 1, Para 3	Report is legally deficient, in part, due to its inclusion of mandates that are beyond the jurisdiction of LAFCo to impose.	See response to District letter G.1, et al
Pg. 1, Para 3	Singular focus on Harvey Rose's tax advocacy	Strongly disagree. Is not a "tax advocate" but strong proponent of transparent and accountable government.
Pg. 1, Para 3	Unclear why District is being subject to unequal treatment.	
Pg. 2, Item 1	LAFCo required to at least concurrently revise the SOI of the District with the adoption of the Report . . . Dissolution findings are unlawful.	See response to District letter G.1, et al
Pg. 2, Item 2.a	Health care service costs would increase due to the loss of millions of dollars of community benefit funding. Eliminating millions of dollars supporting health care services would result in a corresponding increase in health care service costs.	Disagree. Costs for District taxpayers would decline even if services were maintained. Costs would either be assumed by the operator of the Hospital or other parties, or the service would be discontinued. Community benefits are awarded as grants, which come and go based on a variety of factors, including return on investment for the grantor. Basic distinction in public finance: costs equal expenditures - funding equals revenue. These are very distinct concepts. Service costs would decline.
Pg. 2, Item 2.a	Ignores that District resident's tax bills would not change.	Disagree. Paragraph 1 on Page 6-9 states that "Although the total property tax burden would not be reduced for District residents, property tax receipts would be reapportioned to other jurisdictions within the District's tax rate areas, resulting in additional resources for police, fire, schools and other services provided to District residents."
Pg. 3, Item 2.a	No cost-benefit analysis was undertaken to determine if the transactional costs associated with dissolution would support the Section 56881(b)(1) finding.	Partially Agree: There is no finding of dissolution. See Response to District Letter G.1. Agree that a cost benefit analysis was not conducted, since it was well beyond the scope of the solicitation.

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Pg. 3, Item 2.b	The report findings are arbitrary. The Report must analyze the public access and accountability of the successor agency and compare it to the District and disclose the loss of public access or accountability of the Hospital Corporation.	Disagree: There are no findings of dissolution. See Response to District Letter G.1. If there are no taxpayer funds going into the Corporation and only voter approved debt is being paid by the taxpayers, then public accountability extends only to that portion of District operations. As a private non-profit corporation, the Hospital would no longer be accountable to the public -- only to its Board of Directors and customers.
Pg. 4, Item 3.a.1	It is factually inaccurate that the District receives twice as much tax as the third highest district hospital.	Agree: Missed in editing. Actual percentages included in revised report for full disclosure.
Pg. 4, Item 3.a.2	The Report mistates the occupancy percentages for the County and Mountain View Campus.	Agree: Missed in editing. Actual occupancy statistics reconciled in revised report.
Pg. 4, Item 3.a.3	The Report inaccurately implies that health care districts powers that existed at since at least 1982 were created in 1994.	Disagree: Report did not "imply" anything. Reader's bias. However, wording modified in revised report to clarify point.
Pg. 4, Item 3.a.4	The District believes (MediCal Inpatient Days) to be a misleading metric because it does not control for the demographics of the health care district's residents.	Disagree: Serves as an additional point of reference that suggests District does not provide an extraordinary level of community benefit. As shown in the report on Page 3-5, Table 3.2 and discussed on Page 3-6, the combined community benefit statement attributes all but $8 million of its $54 million in community benefit contributions to subsidized health care, including the provision of free and discounted "Government Sponsored Health Care (Medi-Cal)".
Pg. 4, Item 3.a.5	The report falsely states that the Hospital Corporation's CEO does not have voting rights.	Agree: Footnote corrected on Page 4-2.
Pg. 4, Item 3.a.6	The Report falsly states that the District Board took action related to the Hospital Corporation's Los Gatos Hospital transaction.	Disagree: Report discussed separate actions by the District and Corporation boards. However, wording modified in revised report to clarify point.

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Pg. 4, Item 3.a.7	The Report continues to misquote IRS Code Section 501(c)3	Parially Agree: While the not a verbatim quote of the law, it is an official statement from the IRS that describes the content of the law in lay terms.
Pg. 4, Item 3.a.8	The Report continues to use the metric of discharges per 1,000 population despite the District pointing out the more robust and commonly used metric of inpatient days per 1,000 population.	Disagree: Metric is commonly used when conducting such comparisons. As indicated to the District, they are welcome to present alternative analysis to LAFCo at any
Pg. 4, Item 3.a.9	The Report mistates the law by arguing that activities of the Hospital Corporation are activities of the District.	Disagree: The legal status of the Corporation is clearly and repeatedly stated. However, other standards, including those related to financial reporting and public disclosure, have been recognized by the State Legislature and are embedded in various sections of California law (i.e., Brown Act and Public Records Act), as well as public accounting principles sanctioned by the United States
Pg. 4, Item 3.a.10	The Report continues to make conclusory argument that - even though the District's activities are lawful -- the District's activities are incompatible with the intent of the law.	Agree: Analysis supports the conclusion.
Pg. 4, Item 3.a.11	The Report continues to demonstrate bias rather than a neutral recital of facts.	Disagree: Reader bias overlays factual basis for conclusions reached in response to LAFCo's request.
Pg. 5, Item 3.a.12	The table on Report 6-5 continues to ignore all disadvantages resulting in a change in governance - losing public control of the Hospital Corporation, the end of funding for current grantees and increased overhead costs.	Disagree: Public control over the Corporation could be strengthened and overhead costs could be maintained at current levels, depending on conditions of a modified ground lease and management services agreement, which could be enacted as part of the governance change. Funding for current grantees would not need to change, merely because of the change in governance, provided that those grantees are providing services that are consistent with the mission of the District.

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Pg. 5, Item 3.a.13	Report innaccurately states that the District made the Hospital Corporation's "general surplus" contributions and supported the Hospital Corporation's "general operations."	Agree: Report changed to state "surplus cash" and funds used for the hospital replacement project, which is consistent with the information obtained from the District.
Pg. 5, Section b.	The Report's conclusions regarding Los Gatos and the District's dialysis centers are not based on substantial evidence.	Disagree: Although the law allows services to be provided outside of a district's jurisdictional boundaries, we question whether expanding services far outside of the jurisdictional boundaries is appropriate, given the legislative intent when hospital and healthcare districts were formed. This is a legitimate question, which should be considered and resolved by policy makers.
Pg. 6, Section c.	The Report's conclusions regarding the intent of Health Care District law is without foundation. Report fails to address the amendments to the Health Care District Law . . . That demonstrate the legislative intent to permit health care districts to operate in non-rural settings."	Disagree: Statement moved to Section 3 and changed to read, "Based on the El Camino Hospital organization's status in the Santa Clara County healthcare community and the unremarkable level of community benefit contributed to District residents by both the District and Corporation, it is clear that the original intent of the law (i.e., to provide "low income areas" with ready access to "hospital facilities" or to provide health care in "medically underserved areas") is no longer applicable to the El Camino Hospital District." Revised statement clarifies original intent. Focus is on "low income areas" and "medically underserved areas" and has nothing to do with "rural settings." See Statement Pg. 5, Section b.
Pg. 6, Section d.	The Report's conclusion that the District losing control of the Hospital Corporation would increase accountability and transparency is not based on substantial evidence.	Disagree: Under a modified, arms-length contractual relationship, the District would be bound by the public trust to establish agreements with the Hospital Corporation that would ensure public resources are safeguarded and that the Corporation is accountable to the District. However, the business objectives of the private, non-profit Corporation would not be a public concern.

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Pg. 7, Section e.	The conclusion that expanding the District's boundaries would not result in a greater level of service to District residents is not based on substantial evidence. Any programs funded by the District at the Mountain View Campus would necessarily serve more District residents if the District's boundaries were expanded to include all of Santa Clara County.	Partially Agree: An expanded district that included all of the County (as suggested by ECHD) would serve more District residents, until the Hospital began to expand services to residents outside of the County. While expandng the catchment area to include additional County residents would surely recaste current non-District patients as District patients, there would be no additional services provided to these individuals unless El Camino Hospital were able to capture a larger market share. This is an unreasonable assumption, given that the County has a competitive health care industry and would merely result in a greater share of existing property taxes being diverted to El Camino Hospital instead of being available to cities, the County and school districts for other public services.
Pg. 7, Section f.	The conclusion that the audit was unable to distinguish between District and Hospital Corporation funds is false.	Disagree: While funding is segregated, the net assets (e.g., residual funds or profit) are not. The Corporation has been able to accumulate these funds because of substantial asset contributions ($175.5 million) and property tax (approximately $16 million annually) by the District. The net assets derived from these contributions cannot be segregated.
Pg. 8, Section g.i	The Report does not disclose District Community Benefit Recipients that operate within the District.	Agree: District has provided a listing independently for LAFCo's consideration. However, in discussions with the District, no data was available that could demonstrate the proportion of District residents who benefit from the listed programs and so assumptions were made that the recipient profile reflected the general service profile of the hospital.
Pg. 8, Section g.ii	LAFCo improperly conducts a service review of the Corporation	

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Pg. 8, Section g.iii	The Report does not disclose the benefits received from the District serving non-residents.	Disagree: The report clearly recognizes the benefit to the District community throughout the report. Further, we disagree that the expansion to Los Gatos benefits District residents, since the specialty services being provided from that location could be alternately purchased from another health care provider, such as Stanford, without expanding the reach of the Corporation.
Pg. 9, Section 4.a.	If adopted, the Report would lead to inconsistent treatment of local agencies.	
Pg. 10, Section 4.b.	The Service Review was not cooperatively developed.	
Pg. 10, Section 4.c.	The Report fails to acknowledge that LAFCo lacks jurisdiction to manage the	
Pg. 11, Section 4.d.	The dissolution findings are improper because no concurrent dissolution action is under consideration.	Disagree: There are no dissolution findings.
Pg. 11, Section 4.e.	The Report's analysis of transparency fails to follow established metrics.	
Pg. 11, Section 4.f.	The Report's mandates ignore the purpose of a service review.	Disagree: The Report does not include "mandates:, which is a term and characterization being used only by the District's attorneys.
Pg 12, Section 5	The Report is not consistent with Santa Clara's LOAFCo's own policies	