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City of San Pablo
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**Re: Preliminary Comments on the Initial Study/Negative Declaration for
the General/Specific Plan Amendments and Rezoning at the Doctors
Medical Center**

Dear Ms. Rodriguez:

On behalf of the California Nurses Association (“CNA”), this letter provides preliminary comments on the Doctors Medical Center General/Specific Plan amendments and rezoning initial study and negative declaration under the California Environmental Quality Act (“CEQA”). These comments are preliminary because the City of San Pablo (“City”) has proposed to change the land use designation for the Doctors Medical Center (“DMC”) property while the hospital is still operating, and while the future status of DMC continues to evolve CNA will supplement these comments as information is updated and events unfold. These comments are also preliminary because CNA will supplement them with expert opinion on traffic and air quality as soon as possible.

I. Introduction

For much of 2014, CNA has worked tirelessly with other partner organizations and the City of Richmond to keep DMC open and operating. Dissuading the City from taking steps that would contribute to the hospital’s problems is just one of those efforts. CNA is one of California’s oldest nonprofit social welfare institutions. Founded in 1903, today CNA represents over 80,000 members throughout the country. CNA has represented its members on nursing and public health issues before municipal, county, and state bodies for over 100 years. CNA members provide professional care for patients in medical facilities in

San Pablo, Richmond and throughout the San Francisco Bay Area. CNA's comments are made in its representative capacity of CNA members and their families who currently reside in Contra Costa County, on behalf of its members and their families throughout California, and on behalf of health care consumers generally who are directly affected in their health and general welfare by the availability of, access to, and quality and safety of health care services.

Like the public at large, CNA members are concerned about proper planning and sustainable land use and development in San Pablo. CNA members live in communities that suffer the impacts of environmentally detrimental and poorly planned projects. Ill-conceived development, in turn, may jeopardize human health and safety. This is particularly true here because DMC is one of only two hospitals serving west Contra Costa County. Its closure would negatively impact numerous CNA members who work in or live near Doctors Medical Center by, among other things, increasing demand on already stressed public services, causing health and safety problems, increasing traffic congestion and impairing air quality. CNA members are also harmed by the fact that the City of San Pablo failed to comprehensively address the effects the loss of this hospital would have on local communities' access to safe and affordable medical care. CNA therefore has a strong interest in enforcing land use and environmental laws such as CEQA to protect its members.

As discussed below, CNA opposes the proposed action on three overarching grounds. First, the proposed action is premature. Not only is there no actual development project upon which to base a CEQA analysis, there is every indication DMC will continue to operate. Second, it is unclear why the City chose to evaluate a hypothetical development scenario when the evidence shows that the most likely future use will entail purchase and development by the San Pablo Lytton Casino. And third, in the alternative, even if it were proper for the City to move forward in this manner, which it is not, any CEQA analysis concerning the DMC property must include full analysis of the various CEQA impacts caused by the closure of the hospital itself. Because the City's proposed CEQA action concerns policy choices, and because the City connected the closure of the hospital with the need to make land use policy changes, the City must analyze the whole of the action at this juncture. Each of these issues is addressed in Section IV below.

II. Background

Doctors Medical Center began operations in San Pablo in 1954 as Brookside Hospital serving the residents of the newly constituted West Contra Costa Healthcare District. Since that time, DMC has continuously operated as an independent acute care facility.¹ Doctors Medical Center is one of just two hospitals, along with Kaiser Richmond, serving the communities of west Contra Costa County. West Contra Costa County, which includes Richmond and San Pablo, is an area of over 250,000 residents living in the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo and in the unincorporated communities of El Sobrante, Crockett, Kensington, North Richmond, Port Costa, and Rodeo.²

In this process, the City has treated DMC's closure as a foregone conclusion that impels it to make land use policy choices now. However, the evidence shows that the hospital may not be facing imminent closure. In fact, since the City commenced its plan to change the land use designation at the hospital site, both the City of Richmond and West Contra Costa County Healthcare District have taken separate steps to secure the necessary funding to keep DMC operating.^{3,4} These entities, along with others, are working tirelessly to put together funding mechanisms that would keep the hospital viable. Meanwhile, San Pablo is inexplicably devoting its resources to complicating the hospital's status.

Because DMC is one of only two hospitals in this geographically-isolated part of the county, its closure would have far reaching implications on residents throughout West Contra Costa County. Doctors Medical Center serves a neighboring population of disproportionately elderly, African American, disabled, and indigent residents suffering from elevated rates of serious health problems, notably heart disease, cancer as well as adult and child asthma, all of whom rely on DMC for timely care for heart attacks, stroke, respiratory distress, sepsis, and other

¹ Attachment 1 - Impact Evaluation Report: Doctors Medical Center San Pablo Potential Closure of Emergency Services, Prepared by the Contra Costa Emergency Medical Services Agency, pursuant to California Health and Safety Code § 1300, at p. 2. (June 13, 2014).

² Id.

³ Attachment 2 - Preliminary Doctors Medical Center Update, Richmond City Council (October 21, 2014).

⁴ Attachment 3- Rauber, Chris. "Doctors Medical Center Announces Election Day "Hail Mary" Gambit to save San Pablo Safety Net Hospital." *San Francisco Business Times*. N.p., 4 Nov. 2014. Web. 12 Nov. 2014.

life-threatening conditions.⁵ While closure would cause negative impacts to reverberate throughout west Contra Costa County, it is this local population that would be most severely impacted and least equipped to respond. In terms of county-wide repercussions, it is well-documented that the loss of DMC would negatively affect public services such as fire protection, 911 dispatch, and overcrowding at other community hospitals, cause health and safety problems, impact traffic congestion, and increase air pollution.⁶

III. Project Setting and Description

The proposed action would amend the City of San Pablo's General Plan and the San Pablo Avenue Specific Plan to change the Doctors Medical Center property from a designation of "public/institutional" to "commercial mixed use," in addition to other text amendments.⁷ The action also includes a hypothetical "development scenario" with a projected capacity of: 15,000 square feet of office use; 38,000 square feet of retail use; 15,000 square feet of indoor recreation use; and a 100-room hotel of 50,000 square feet. Parking capacity and landscaping would be provided commensurate with zoning code and specific plan regulations and a building setback from Wildcat Creek would be required.⁸

Importantly, Doctors Medical Center is the existing land use. DMC is an eight-story hospital constructed in the early 1950's. The approximately 12.5-acre hospital site is bordered by Vale Road and medical offices on the northwest, the San Pablo Lytton Casino parking lot on the northeast, the San Pablo Lytton Casino on the southeast, and Wildcat Creek on the southwest. Access to the site is via Vale Road to San Pablo Avenue, a major City arterial roadway. Single-family residential uses are located to the southwest of Wildcat Creek within the City of Richmond.⁹

⁵ Attachment 4 - Letter from Joe Lindsay, Public Sector Division Director, California Nurses Association, to Dr. Ron Chapman, California Department of Public Health, at p. 3, internal cites omitted (September 24, 2014).

⁶ *See generally* Attachment 1, Impact Evaluation Report.

⁷ Initial Study/Negative Declaration for Doctors Medical Center General Plan/Specific Plan Amendments and Rezoning at p. 2 (October 1, 2014)

⁸ *Id.*

⁹ *Id.* at p. 1.

IV. The Initial Study/Negative Declaration Did Not Comply with CEQA

A. Conducting CEQA for Land Use Changes at the DMC Property is Premature

CEQA contains a substantive mandate that public agencies refrain from approving projects with significant environmental effects if there are feasible alternatives and mitigation measures that can substantially lessen or avoid those effects.¹⁰ Implicit in this mandate is that agencies bring to the public tangible projects, the merits of which the agency and public can substantively evaluate. The rule of thumb under CEQA is that Environmental Impact Reports (“EIRs”) and negative declarations should be prepared as early in the planning process as feasible so that environmental considerations can influence project design, yet **late enough to provide meaningful information for environmental assessment**.¹¹ Here, the City admits its “project” is to change the land use designation out from under Doctors Medical Center despite the hospital still operating, and despite the City not having an actual development plan to evaluate.¹² If action were taken at this time, it would be too early to provide the public with meaningful information on how the proposed change in land use designation would ultimately affect development at the DMC site. Similarly, the City’s action is premature for several connected reasons, each of which is discussed in subsequent sections below:

1. The City has not put forth an actual development project that the public can assess and comment upon;
2. The City is proposing land use policy changes despite evidence the hospital will continue operating at its existing site; and,
3. The City should support the efforts to save DMC, rather than expending public resources to assist DMC’s demise.

As shown below, the City must withdraw the initial study and negative declaration on grounds that it is untimely and actually harms the ability of DMC to remain open. Should the hospital cease operation and a new buyer for the site

¹⁰ CEQA § 21002; *Mountain Lion Foundation v. Fish and Game Commission* (1997) 14 Cal.4th 105, 134.

¹¹ CEQA Guidelines § 15004(b).

¹² DMC IS/ND at p. 7.

propose a development project, then the time would be ripe for the City to contemplate future development at the DMC site. Until then, the City is wasting precious public resources on a non-project.

1. The City Has Not Put Forth an Actual Development Project That the Public Can Assess and Comment Upon

The City is proposing land use policy changes that would rezone the DMC hospital property from “public/institutional” to “light commercial.”¹³ Rather than waiting to present the public with an actual project to evaluate, the City described a hypothetical “development scenario” of mixed uses from which to assess environmental impacts.¹⁴ Conveniently, the intensity of the hypothetical development scenario just happens to be less than the existing DMC baseline use, so the City found that the hypothetical development scenario would not have any environmental impacts under CEQA.¹⁵

This approach ignores CEQA’s longstanding admonition that “premature environmental analysis may be meaningless and financially wasteful.”¹⁶ The proposal is premature because there is virtually no chance that a future developer would propose the exact mix of uses put forth in the negative declaration, *and* that exact mix would be shown, based on substantial evidence, to not pose any environmental impacts under a full and proper CEQA analysis. In addition, the City admitted that should an actual project be put forth, it would have to conduct project-specific CEQA review at that time.¹⁷

It makes no sense for the City to expend precious public resources and staff time on land use changes that are both premature and hopelessly amorphous. And it makes even less sense to ask the public to weigh in on what *may* become important land use policy changes in the future based on a premature, hypothetical development scenario. It simply is not fair to expect the public to engage in a CEQA process that contemplates land use changes should a hospital they depend on cease operation at some point in the future. Finally, the City’s actions would be

¹³ DMC IS/ND at p. 8.

¹⁴ Id. at p. 21.

¹⁵ Id. at p. 26.

¹⁶ *Berkeley Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1360 *citing* *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263.

¹⁷ Statement by San Pablo City Manager, Matt Rodriguez, at DMC Public Briefing (October 29, 2014).

particularly unfair should it go forward with this process and then move to severely limit any subsequent public involvement should a future development project come to fruition based on the City's actions here.

The attached comments from Matt Hagemann perfectly illustrate the public's inability to evaluate the potential impacts associated with future development on the DMC property. Mr. Hagemann has over 25 years of experience assessing and remediating hazardous waste, soil and groundwater contamination and air pollution.¹⁸ Mr. Hagemann found that any future disturbance at the site could expose workers to contaminants in soil, and it is well documented that any disturbance to the hospital structure itself would expose workers to asbestos and lead.¹⁹ In fact, given the site's history, a full Phase 1 Environmental Site Assessment would be required should it ever be proposed for redevelopment.²⁰ However, because the City is not currently proposing any physical changes to the site itself, Mr. Hagemann was unable to provide substantive comments for future development on the property. In Mr. Hagemann's expert opinion, the proposed action is premature because the City "has not provided the public with a concrete project to evaluate one way or the other."²¹

Given the futility of trying to evaluate and approve a hypothetical "development scenario," along with premature land use policy changes, it is perplexing that the City did not disclose the actual anticipated future use of the site should DMC close. It is widely known that the San Pablo Lytton Casino is the likely purchaser of the property should it be sold. The Casino is expected to pay the highest price for the parcel, and the interim hospital CEO has been working with the Casino concerning matters that could affect the sale price such as site contamination.²² The City has already entered into a lease agreement with the Casino allowing the Casino to remove an existing hospital parking lot. And the City has already issued the Casino four permits to complete various work concerning the parking lot project.²³ Finally, at a public briefing regarding the proposed policy changes on October 29, 2014, San Pablo City officials publicly acknowledged that they have been actively involved in

¹⁸ Attachment 5 - Matt Hagemann Comments on the Doctors Medical Center Project; Matt Hagemann Curriculum Vitae.

¹⁹ Id. at p. 2.

²⁰ Id. at p. 1.

²¹ Id. at p. 3.

²² Attachment 6 - Email from Dawn Gideon, DMC Interim CEO, to Irma Anderson, Nancy Casazza, Eric Zell, Deborah Campbell, and Beverly Wallace (September 8, 2014).

²³ Attachment 7 - Sanchez, Gabriel J. "Lytton Casino Paves Its Way towards DMC." *Richmond Confidential*. N.p., 1 Nov. 2014. Web. 12 Nov. 2014.

pivotal steps toward the anticipated closure of DMC, including: (1) “brokering” the parking lot lease between the West Contra Costa Healthcare District and the Lytton Band²⁴; and (2) working with West Contra Costa Healthcare District officials in November and December 2013 on a plan to “deed” to the District a parcel of land under the City’s jurisdiction as the Local Successor Agency for a redevelopment project northwest of the project site, which is known as “the Circle S Project,” for construction of a replacement hospital.²⁵

The negative declaration acknowledged that the City “intends to enable a portion of or the entire DMC site to accommodate uses that specifically support the San Pablo Lytton Casino’s Class II gaming operations, i.e., card room, should such expansion be requested by the casino in the future.²⁶ There is a fair argument based on substantial evidence that the DMC site could be purchased and utilized by the San Pablo Lytton Casino to expand or support the existing gaming use. Therefore, the City was required to include an alternative in its CEQA document analyzing this potential casino use.

2. The City is Proposing Land Use Policy Changes Despite Evidence the Hospital Will Continue Operating at Its Existing Site

As mentioned above, the evidence shows that the hospital may not be facing imminent closure. In fact, since the City commenced its plan to change the land use designation at the hospital site, both the City of Richmond and West Contra Costa County Healthcare District have taken separate steps to secure the necessary funding to keep DMC operating.²⁷ On both October 7 and 21, 2014, the Richmond City Council met to solidify a commitment to allocate \$15 million of the \$90 million settlement agreement with Chevron to support full services at DMC, while working on additional funds from other sources. On November 4, 2014, DMC management

²⁴ Statements made by City of San Pablo at DMC Public Briefing (October 29, 2014); *see also* Attachment 8 - Parking Lot Lease Approval Between WCCHD and Lytton Rancheria of California.

²⁵ Statements made by City of San Pablo at DMC Public Briefing (October 29, 2014); *see also* Attachment 9 - Agenda and Meeting Packets from the November 4, 2013 West Contra Costa Healthcare District Governing Body meeting and the December 16, 2013 City Council/LSA meeting.

²⁶ DMC IS/ND at p. 8. Even if expansion of Class II gaming would not occur on the project site itself, parking and other uses would support a future casino expansion.

²⁷ Attachment 2 - Preliminary DMC Update; *see also* Attachment 10 - Agenda and Meeting Packets from the November 4, 2014 West Contra Costa Healthcare District Governing Body meeting.

announced a new plan for raising the necessary funds to keep the hospital viable.²⁸ Specifically, the board chairman of the West Contra Costa Healthcare District, which operates the hospital, presented a plan that would put together yearly funding from a mix of public and private sources to keep the hospital operating for the next three to five years at least.²⁹ These and other efforts aim to create plans that would keep the hospital viable. The City of San Pablo must not take any action that would sabotage this progress.

3. The City Has a Duty to Support the Efforts to Save DMC, Rather than Expending Public Resources to Assist Its Demise

Instituting land use policy changes at this juncture furthers no discernible public interest, because there is discernible need to rezone the property while the hospital continues to operate. Indeed, City action would render the hospital a non-conforming use under the General Plan, a hostile act that would place unnecessary burdens on the already beleaguered DMC hospital. Given DMC is the only hospital in San Pablo, and evidence of an overwhelming community desire to save DMC, the City should be leading efforts to keep its only hospital operating rather than telegraphing a very public vote of no confidence.

The City must act solely in the public's best interest. In this way, the City is akin to a fiduciary in that the public interest burdens the City with a duty to its residents to manage City assets and property in a manner that protects the people of San Pablo. The City's action here may not constitute a breach of this duty, but the proposed land use policy changes give the appearance that the City has given up on DMC and simply wants to make the property more marketable to a prospective developer, i.e., the San Pablo Lytton Casino, by prematurely rezoning the land for commercial development. According to the City, the proposed policy changes are necessary to the City "acting proactively" by making zoning and general and specific plan amendments to facilitate new development on the hospital property.³⁰ And while the proposal contains a hypothetical development scenario, the evidence shows the most likely purchaser of the property would be the Lytton Casino, so it is unclear why the City is taking action against DMC on an unlikely hypothetical development scenario at this time. Given the weight of the evidence indicates the

²⁸ Attachment 10 - Agenda and Meeting Packets from the November 4, 2014 West Contra Costa Healthcare District Governing Body meeting.

²⁹ Attachment 11 - Baires, Jennifer. "Divide Emerges in Effort to save Doctors Medical Center." *Contra Costa Times*. N.p., 9 Nov. 2014. Web. 12 Nov. 2014.

³⁰ DMC IS/ND at p. 7.

San Pablo Lytton Casino is the most likely buyer, the City should put before the public the stark choice between keeping its only hospital operating and picking a casino expansion. This choice must be fully described in an EIR alternatives analysis.

Finally, through its rezoning and policy changes, the City would foreclose the purchase by another private or public entity that might want to construct a full-service, acute care hospital on the DMC site, e.g., Contra Costa County, UCSF, Kaiser, or John Muir.

B. The City Was Required to Analyze the Closure of DMC in an EIR

As shown above, finalizing a negative declaration on policy changes for the DMC hospital property is premature and would actually harm the ongoing efforts to save the hospital. Nevertheless, should the City proceed with changing DMC's land use designations, it must withdraw the negative declaration and prepare an EIR that includes the whole of the action, i.e., an analysis on the potentially significant impacts that would occur with the full and permanent closure of DMC.

1. The Possible Closure of DMC and the City's Proposed Policy Changes at the Hospital Site Are Parts of One Project under CEQA

The negative declaration projected that DMC would close in early 2015.³¹ It is the City's expectation of hospital closure that is driving the proposed action. Therefore, the closure of DMC is a central component of the proposed action, and the two events are inextricably linked: DMC must run out of funding and permanently close before a new commercial use of the hospital property can be considered. Also, the initial study and negative declaration acknowledge the relationship. For example, the City relied on the hospital's existing environmental impacts as the baseline from which to assess impacts of the City's hypothetical development scenario. According to the City, "the future development scenario was influenced in significant part by the City's desire to enable uses whose environmental effects are largely within the scope and intensity of those for the existing baseline DMC use."³² In the negative declaration the City measured air

³¹ DMC IS/ND at p. 7.

³² Id. at p. 21.

quality, traffic and greenhouse gas impacts against the existing DMC impacts.³³ Therefore, the “whole of the action” is the City’s proposed policy changes that would only be relevant were DMC to cease operation. CEQA requires the City to investigate and disclose any potentially significant impacts associated with the whole of the action, including DMC’s shutting down.³⁴

An EIR is required because the closure of Doctors Medical Center would result in direct and reasonably foreseeable indirect physical changes that would have significant adverse impacts on public services, public health, local and county-wide traffic congestion, public safety, air pollution, socio-economic changes and other impacts on the City and County. Because it is the anticipated permanent closure of DMC that is driving the City’s land use changes and CEQA analysis, the environmental impacts associated with the closure of DMC should have been analyzed in a full EIR for the proposed project but were not. This is particularly true here because at this juncture the City is simply making public policy choices rather than acting upon a specific development proposal. It is at this point in the decision-making process that the City must evaluate the very real environmental impacts the closure of DMC would cause locally, county-wide and beyond. “The scope of review under CEQA is not confined to immediate effects but extends to reasonably foreseeable indirect physical changes to the environment.”³⁵

The City has acknowledged that should DMC close and a future developer propose a specific project, the City would have to prepare a CEQA analysis on that project.³⁶ The City may not lawfully defer DMC closure analysis until that later CEQA process. It is at *this* point in time, before the hospital is shuttered, that the City is required to inform the public of possible alternatives and mitigation measures in connection with the loss of DMC. It would be pointless for the City to inform the public of these impacts *after* DMC closes, because then it will have lost

³³ Id.

³⁴ “[The] term ‘project,’ . . . means the *whole of an action* which has a potential for a physical impact on the environment, and . . . [the] term “*project*” refers to the *underlying activity and not the governmental approval process.*” (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 59 Cal.App.3d 959, 969. In addition, a CEQA “project” is “the whole of an action” undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” CEQA § 21065; CEQA Guidelines, § 15378(a).

³⁵ *California Unions for Reliable Energy v. MDAQMD* (2009) 178 Cal.App.4th 1225, 1242.

³⁶ Statement by San Pablo City Manager, Matt Rodriguez, at DMC Public Briefing (October 29, 2014).

all flexibility to inform the public on measures or alternatives to mitigate its loss.³⁷ Accordingly, any deferral of CEQA review of DMC's closure would constitute unlawful piecemealing under the law.³⁸ Since 1975 it has been unlawful for an agency to piecemeal connected actions by defining a project in a manner that ignores "its cumulative impact by separately focusing on isolated parts of the whole."³⁹ This is true because even though the change in land use designation does not by itself directly cause the hospital to close, it is reasonably foreseeable that such policy changes would encourage future purchase of the site, putting further pressure on the hospital; indeed, that is the point of the City's proposed action.⁴⁰

2. The City Must Investigate and Disclose in an EIR All Potentially Significant Impacts Associated with DMC's Possible Closure

The whole of the City's action is the possible closure of DMC and then potential sale and development of the site for a commercial use. Therefore, the City was required to expand its analysis in an EIR. There are different criteria for preparation of EIRs and negative declarations. According to CEQA, if an initial study produces no substantial evidence, or reasonable inference, that the project may result in significant adverse environmental impacts, the agency may adopt a negative declaration, so long as no other documents in the administrative record contain substantial evidence that the project may cause a significant environmental effect.⁴¹ More specifically, CEQA requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.⁴² Most relevant here is the CEQA requirement that when a proposed action may cause a physical change in the environment, the lead agency must consider whether the change will have a potential impact on people.⁴³ As described below, there is substantial evidence showing that were DMC to close, numerous, potentially significant impacts would occur to public services, health and safety, socio-economic conditions, traffic congestion, and air quality.

³⁷ CEQA Guidelines § 15004(b). *See also California Unions for Reliable Energy v. MDAQMD* (2009) 178 Cal.App.4th at p. 1247 (agency may not piecemeal CEQA review such that it forecloses the opportunity to timely consider alternatives and mitigation measures).

³⁸ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263.

³⁹ *Id.* *See also McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space Dist* (1988) 202 Cal.App.3d 1136, 1143 overruled on another point.

⁴⁰ *CURE v. MDAQMD* (2009) 178 Cal.App.4th at p. 1244 (reasonably foreseeable that agency's adoption of policy change **encouraged** subsequent third-party action reviewable under CEQA).

⁴¹ CEQA §21080(c); CEQA Guidelines §§ 15064(f)(3);15070.

⁴² *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

⁴³ CEQA § 21083(b)(3).

a. The City Must Prepare an EIR that Discloses the Potentially Significant Impacts on Public Services

Pursuant to the CEQA Guidelines, Appendix G, an agency’s environmental review must include the assessment of impacts to public services. Specifically, Appendix G asks:

“Would the project result in substantial adverse impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered facilities..., in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:

- Fire Protection?
- Police Protection?
- Schools?
- Parks?
- Other public facilities?”

According to the City’s negative declaration, the hypothetical development scenario would not impact public services because it “would result in less development intensity on the project site relative to the baseline DMC use.”⁴⁴ But, as shown above, this analysis was too narrowly drawn. The City was required to include the potential closure of DMC in an EIR, and analyze the impacts on public services that the closure of this essential community hospital would have on city and county fire, police and other public services such as other hospitals.

The need for an EIR is all the more compelling because such impacts have already been well-documented. In its preparation of the initial study, the City should have known that the Contra Costa Health Services Agency conducted an independent report that specifically evaluated the impacts closure of DMC’s emergency services would have on fire personnel, 911 services, emergency ambulance service and other public resources, including other hospitals.⁴⁵ This report provided independent substantial evidence of significant impacts on public service that must be evaluated in an EIR. Among the report’s numerous impacts implicating public services were:

⁴⁴ DMC IS/ND, Section 14, Public Services.

⁴⁵ Attachment 1, Impact Evaluation Report.

- Decreased fire protection when fire personnel are forced to accompany critical patients transported by ambulance to more distant hospitals.
- Longer response times for pre-hospital emergency medical services as a result of longer out-of-service times for pre-hospital EMS personnel engaged in patient transports to more distant hospitals.
- Increased demand for public emergency services caused by increased reliance on “911 transports” and reduced use of “private transports” because patients are unfamiliar with routes to more distant hospitals or are uncomfortable with the longer transport times by private automobile. This may occur due to a patient’s/family’s failure to know that emergency services have been discontinued or inability to distinguish between medical conditions requiring “urgent care” services and those requiring “emergency care” services.
- Potential increase in the number of emergency calls to 911 because patients will access 911 rather than private transport due to the longer driving distance and lack of familiarity with routes to other facilities.
- Delays in fire and ambulance response resulting from increased time on task.
- Increased burden on surrounding hospital emergency departments forced to absorb more than 40,000 emergency department patients previously cared for by DMC.
- Closure of DMC would leave the area with only one small hospital emergency department at Kaiser Richmond.
- Loss of community resources for disaster response.
- Other hospital emergency departments that may be impacted by a closure include Alameda County Highland Hospital, Alta Bates Summit and Berkeley Hospitals, Marin General in Marin County, Sutter Solano, Kaiser Medical Center in Vallejo and Contra Costa Regional Medical Center (“CCRMC”) in Martinez. Sutter Solano and Kaiser Vallejo would become the closest emergency services to the community of Crockett, and CCRMC would become the closest to Port Costa.

- Loss of nearby hospital emergency services for convalescent and assisted-living facilities located near Doctors Medical Center.
- The shift of patient populations from the existing full services of Doctors Medical Center to other hospitals, including Alameda County Highland Hospital, Alta Bates Summit and Berkeley hospitals, Marin General in Marin County, Sutter Solano and others noted above would put a severe strain on the already severely overtaxed emergency and acute care capacity in the region.

The Contra Costa Health Services Report simply documented the severe impacts associated with loss of emergency service, but DMC is a full service acute care hospital that provides a variety of essential services such cardiovascular care, radiology, hyperbaric medicine, and cancer treatment.⁴⁶ In addition, DMC is a designated primary stroke center serving 50% of West County stroke patients, and STEMI-receiving center which provides specialized acute care services for heart attack patients.⁴⁷ The next closest STEMI-receiving center to DMC is John Muir Medical Center, which is 22 miles away.⁴⁸ The loss of each of these essential services would only add to the above-described impacts and also severely burden other public services city- and county-wide. All of these impacts must be investigated and disclosed in an EIR.

b. The City Must Prepare an EIR that Discloses the Health and Safety Problems Caused by the Possible Closure of DMC

Pursuant to CEQA Guidelines, Section 15126.2:

“An EIR shall identify and focus on the significant environmental effects of the proposed project. ... Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including

⁴⁶ See Doctors Medical Center Website, at: <http://doctorsmedicalcenter.org/hospital-services>

⁴⁷ Attachment 1, Impact Evaluation Report at p. 4.

⁴⁸ Id.

commercial and residential development), *health and safety problems caused by the physical changes*, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. ...”

According to this CEQA rule, if the environmental changes are significant, then an EIR must analyze “health and safety problems caused by the physical changes.⁴⁹ Here, the loss of the only community-based acute care hospital in west Contra Costa County would be a significant environmental change that requires the City to analyze the identified health and safety issues related to a permanent loss of all DMC services. The loss of emergency services, cardiovascular care, imaging and radiology, hyperbaric medicine and other laboratory services, along with closure of the cancer center, will greatly burden other public services and will most certainly present health and safety problems.

Currently, DMC has special facilities for disaster response including an approved helicopter landing pad and a separate decontamination area with buffer zone, control points, shower and sink and a decontamination table with a drainage system.⁵⁰ In the 2012 Chevron Refinery fire incident, DMC was highly prepared to receive mass numbers of patients.⁵¹ During a multi-casualty event with a large number of patients regional mutual aid from out-of county ambulance providers will certainly be needed. West County has one of the highest risk profiles for these types of events due to the concentration of chemical and oil industry facilities within the community, and earthquake demographics.⁵² Delays to hospital care associated with a potential DMC closure could result in increased mortality and morbidity.⁵³ If the hospital closes, there would be reduced capability to manage a similar event at any scale. In short, closing DMC would cause severe and potentially catastrophic health and safety problems and burden other public services, all of which are potential effects that must be analyzed under CEQA.

In addition, all patients depend on access to their local community hospitals for a variety of critical health care services. Clearly, the elimination of service to a large portion of the patient population in West County that currently frequents Doctors Medical Center constitutes a significant effect on public health caused

⁴⁹ CEQA Guidelines § 15126.2(a).

⁵⁰ Attachment 1, Impact Evaluation Report at p. 15-16.

⁵¹ Id. at 15.

⁵² Id. at 16.

⁵³ Id. at p. 15-16.

directly by the elimination of services at DMC. What is more, this loss of service would not only affect the patient population in West County but countless other Bay Area patients and medical care providers due to the increased pressure on emergency department services when beds are not available. These are clear health and safety issues that must be analyzed in an EIR.

c. The City Must Prepare an EIR that Discloses the Potentially Significant Traffic Impacts Caused by the Possible Closure of DMC

Closure of DMC would have a potentially significant impact on traffic congestion. Closure would shift the current patient population to other hospitals in the region, often down the heavily congested I-80 corridor. This transfer would have a number of adverse effects and consequences. For one, it would increase the regional vehicle miles traveled as patients and visitors are forced to travel to hospitals that are located farther from their homes. Emergency service vehicles, forced to transport patients to hospitals located farther away, would be delayed. As noted above, emergency services vehicles and private transport vehicles will travel longer distances for patient care.⁵⁴

The communities of west Contra Costa County lie along the Interstate 80 corridor, which runs from the Vallejo Bridge spanning the Carquinez Strait on the north through the communities of Crockett, Rodeo, Hercules, Pinole, El Sobrante, San Pablo, Richmond, and El Cerrito before continuing into Alameda County and to the San Francisco-Oakland Bay Bridge. This section of I-80 is one of the busiest traffic and trucking corridors in the state. This is a heavily industrialized corridor which includes two major oil refineries, deep water shipping facilities, and major rail lines. The area is also traversed by a major earthquake fault – the Northern Hayward Fault.⁵⁵ Were DMC to close, additional emergency vehicles and private car trips would utilize I-80 to travel to Alameda County Highland Hospital, Alta Bates Summit, other Berkeley hospitals, Marin General in Marin County, Sutter Solano, and others.

Finally, an EIR must investigate and disclose additional potentially significant traffic issues such as: Longer travel times to reach hospital emergency services; Lack of reasonably convenient public transportation access to emergency

⁵⁴ Attachment 1, Impact Evaluation Report at p. 5.

⁵⁵ *Id.* at p. 11.

services and urgent care: Ongoing traffic congestion and construction projects planned by the California Department of Transportation (“Caltrans”) could contribute to making travel in and out of West County prolonged, especially during peak commute hours. The increased vehicle miles traveled and the longer trips for patient, visitor, and emergency vehicles to and from other hospitals on I-80 and other arterial roadways would also increase the regional air quality emissions and associated adverse impacts on public health. Average travel times to nearby hospitals from DMC could increase by an average of 20-25 minutes.⁵⁶

d. The City Must Prepare an EIR that Discloses the Potentially Significant Socio-economic Impacts Caused by the Possible Closure of DMC

As shown above, the closure of DMC would be an adverse physical change to the environment that would cause increased traffic congestion, significant burdens on public services, and health and safety problems. In this connection, “if the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant.”⁵⁷ Put differently, “where economic and social effects result from a physical change that was itself caused by a proposed project, then these economic and social effects may be used to determine that the physical change constitutes a significant effect on the environment.”⁵⁸ Here were DMC to cease operations, potential direct and indirect economic impacts to the City and surrounding communities include:

- Loss of economic base and loss of an important amenity which attracts residential and business development.
- Loss of local access to acute and emergency care, resulting in disproportionate adverse socio-economic impacts on low-income residents of San Pablo, Richmond and West County, in general, who are already faced with a lack of access to other medical care, child care, transportation, etc. Adding this extra burden of not having local access to community-based acute care would constitute an environmental injustice.

⁵⁶ Attachment 2 - Preliminary DMC Update at p. 19.

⁵⁷ CEQA Guideline § 15064(e).

⁵⁸ *Bakersfield for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205.

- Individuals below the federal poverty line are more at risk than others for increased mortality and morbidity during disaster. West County residents are at increased risk based on those criteria and have fewer resources for community resiliency. The groups most likely to be affected are the elderly, children, diabetics and individuals with respiratory diseases and special needs.⁵⁹ Loss of DMC would certainly exacerbate these concerns.

The City acknowledged that it was the potential closure of DMC that induced it to consider land use policy changes at the hospital site in the first place. Yet it has completely ignored the numerous and potentially significant direct impacts and reasonably foreseeable indirect impacts associated with a potential hospital closure. As shown above, closing DMC would cause numerous potentially significant impacts under CEQA that must be investigated and disclosed in an EIR. Indeed, the Contra Costa Emergency Medical Services Agency made a finding that “the closure of [DMC] hospital emergency services will have a catastrophic affect on the delivery of emergency medical services in the communities of Richmond, San Pablo, Pinole, Hercules, Rodeo, El Sobrante, Crockett, and Port Costa and on the County as a whole.”⁶⁰ Many of those effects have direct and indirect physical impacts on public services, health and safety, traffic congestion and air quality, all of which must be investigated and disclosed in a CEQA document for public review.

CNA has endeavored to provide the City with the necessary facts showing that a full EIR is required to investigate and disclose to the public the potentially significant, even potentially catastrophic, impacts that could occur were DMC to close. Nevertheless, the lead agency bears the burden to investigate potential environmental impacts. “If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”⁶¹ Here, CNA has made the requisite showing that a negative declaration absent any discussion of the potential closure of EPA does not comport with CEQA.

⁵⁹ A large portion of West County is below the Federal Poverty Line, According to the Contra Costa 2013 Risk-Based Initiative Pilot Project.

⁶⁰ Contra Costa 2013 Risk-Based Initiative Pilot Project at p.7.

⁶¹ *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal. App. 4th 1544.

V. Conclusion

The City has proposed to turn Doctors Medical Center into a nonconforming use under the land use laws of San Pablo even though the hospital is still operating, and despite efforts by numerous entities to secure funding that would keep DMC open. The City should be devoting precious public resources to saving San Pablo's only hospital rather than further complicating its viability. Compounding the problem, the City's initial study and negative declaration failed to satisfy several of CEQA's most important mandates: First, agencies must put forth tangible projects in order to avoid premature decision making. Second, agencies may not chop large projects into smaller ones in order to avoid comprehensive analysis of the whole of an agency action. Finally, agencies must investigate and disclose an action's impact on people. Here, that means assessing the numerous impacts closure of DMC would have on people city- and county-wide. Because the City's proposed project failed to address all of these issues and others described above, it may not lawfully approve the initial study and negative declaration pursuant to CEQA.

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