

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Law Corporation
2 Lawrence M. Schoenke, SBN 92314
lschoenke@aalrr.com
3 5075 Hopyard Road, Suite 210
Pleasanton, California 94588-3361
4 Telephone: (925) 227-9200
Fax: (925) 227-9202
5
6 Attorneys for MT. DIABLO
UNIFIED SCHOOL DISTRICT

7
8 CONTRA COSTA COUNTY COMMITTEE ON
9 SCHOOL DISTRICT ORGANIZATION
10 STATE OF CALIFORNIA

11 In the Matter of

12 THE REORGANIZATION OF MT. DIABLO
13 UNIFIED SCHOOL DISTRICT-NORTHGATE
14 AREA BY 25 PERCENT REGISTERED
VOTER PETITION

**FINAL COMMENTS AND EVIDENCE
IN OPPOSITION TO PETITION FOR
REORGANIZATION OF THE
NORTHGATE AREA-MT. DIABLO
UNIFIED SCHOOL DISTRICT**

Hearing Date: August 29, 2017

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION..... 1

A. Summary of District Positions on Petition..... 1

B. Governing Board Position on Possible Reorganization..... 2

II. HISTORY 3

III. ANALYSIS 4

A. The Ten (Nine Operative) Statutory Criteria..... 4

1. The Reorganized Districts will be Adequate in Terms of Number of Pupils Enrolled..... 5

2. The School Districts are Each Organized on the Basis of a Substantial Community Identity. 6

a. Highlands Elementary School..... 7

b. Oak Grove Middle School and Ygnacio Valley High School 8

c. Mount Diablo Unified School District..... 9

d. The Greater Community 10

3. The Proposal Will Result in an Equitable Division of Property and Facilities of the Original District or Districts..... 13

4. The Reorganization of the School Districts Will Preserve Each Affected District’s Ability to Educate Pupils in an Integrated Environment and Will Not Promote Racial or Ethnic Discrimination or Segregation. 14

5. Any Increase in Costs to the State as a Result of the Proposed Reorganization Will Be Insignificant and Otherwise Incidental to the Reorganization. 18

6. The Proposed Reorganization Will Continue to Promote Sound Education Performance and Will Not Significantly Disrupt the Educational Programs in the Affected Districts..... 19

7. Any Increase in School Facilities Costs as a Result of the Proposed Reorganization Will Be Insignificant and Otherwise Incidental to the Reorganization. 22

8. The Proposed Reorganization is Primarily Designed for Purposes Other than to Significantly Increase Property Values..... 23

TABLE OF CONTENTS, cont.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. The Proposed Reorganization Will Continue to Promote Sound Fiscal Management and Not Cause a Substantial Negative Effect on the Fiscal Status of the Affected Districts..... 24

10. Any Other Criteria as the State Board may, by Regulation, Prescribe..... 26

B. Section 35705.5 Powers and Content of Petition..... 27

1. The Rights of the Employees in the Affected Districts..... 28

2. Area of Election and Voting as Single Proposition. 28

C. California Environmental Quality Act (“CEQA”)..... 30

D. The County Committee’s Authority and Duty..... 32

IV. CONCLUSION..... 32

EXHIBITS

1. Mt. Diablo Unified School District Resolution No. 16/17-28 Regarding Pending Petition for District Reorganization Northgate Area

2. CDE, Educational Demographics Unit, Data Quest, 2016-2017

3. Attendance Area Map of Bancroft Elementary School

Three Year Trend, CDE, Educational Demographics Unit, Data Quest 2016- dial (563) 999-2090, then enter Access Code 419844

4. 2017

5. Demographic Analysis, 2017-2018, Eastshore Consulting

6. Analysis of Northgate Related Special Education Programs, December 2016

7. Analysis of Northgate Area Tax Roll for 2016-2017 (July 2017)

8. Multiple Year Projection, June 26, 2017, adopted by the Board and Financial Status of the Mt. Diablo USD

9. Administrative Salary Schedule 2016-2017 for Martinez Unified School District

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
2 A Professional Law Corporation
3 Lawrence M. Schoenke, SBN 92314
4 lschoenke@aalrr.com
5 5075 Hopyard Road, Suite 210
6 Pleasanton, California 94588-3361
7 Telephone: (925) 227-9200
8 Fax: (925) 227-9202
9
10 Attorneys for MT. DIABLO
11 UNIFIED SCHOOL DISTRICT

12 CONTRA COSTA COUNTY COMMITTEE ON
13 SCHOOL DISTRICT ORGANIZATION
14 STATE OF CALIFORNIA

15 In the Matter of

16 THE REORGANIZATION OF MT. DIABLO
17 UNIFIED SCHOOL DISTRICT-NORTHGATE
18 AREA BY 25 PERCENT REGISTERED
19 VOTER PETITION

**FINAL COMMENTS AND EVIDENCE
IN OPPOSITION TO PETITION FOR
REORGANIZATION OF THE
NORTHGATE AREA-MT. DIABLO
UNIFIED SCHOOL DISTRICT**

Hearing Date: August 29, 2017

20 **I. INTRODUCTION**

21 **A. Summary of District Positions on Petition.**

22 The Mt. Diablo Unified School District (“District” or “MDUSD”) summarizes its position
23 as follows:

24 1. The proposal made by the Northgate CAPS petition takes several schools without
25 the schools' corresponding population, resulting in displacement of students and in an inequitable
26 division of school site assets.

27 2. The petition also assumes a greater student population than actually physically
28 resides within the boundaries set forth in the petition. Specifically, the proposal includes
intradistrict transfers. This inclusion is problematic because unlike the students that physically
reside within the proposed new boundaries, there is no mechanism to guarantee those transfers

1 will attend the new district. As a result, petitioners' (and School Services, Inc.'s) data on ADA and
2 funding and all other areas where an accurate number of students is critical to properly analyze
3 impacts is overstated.

4 3. The petition also fractures existing community identities of many other attendance
5 areas in the District for the benefit of a single area.

6 4. The petition requires, at a minimum, that MDUSD make capacity for 736 returning,
7 intradistrict students (and perhaps 2,612 students) but fails to address how the displaced
8 population would be housed by MDUSD and creates displacement at multiple school sites beyond
9 the immediate area proposed for transfer to house displaced students.

10 5. The petition disproportionately impacts minority students in Hispanic, African
11 American, and other subgroups impinging on their ability to be educated in integrated school
12 environments and the formation of the new proposed district fosters segregation.

13 6. The petition negatively impacts educational programs, especially for special
14 education students.

15 7. The economics of the petition create significant additional costs for facilities and
16 operations in comparison to available resources (for both MDUSD and the proposed new district).

17 8. The petition requires the segregation of existing infrastructure and the formation of
18 new redundant support systems without identifying the required land, buildings, or funds to
19 achieve this replication.

20 9. The petition requires a net increase to the cost to the State for operations, and
21 particularly for facilities.

22 10. The petition places a significant new burden on taxpayers, requiring at least two
23 ballot measures, within the proposed district to achieve comparable programs, operations
24 revenues, and facilities funding. The petition would create a fiscally unsound small district at the
25 outset to serve the students of the Northgate area. The fiscal health of this small district would
26 also deteriorate rapidly in subsequent years.

27 **B. Governing Board Position on Possible Reorganization.**

28 On January 23, 2017, the Governing Board of MDUSD unanimously adopted Resolution

1 No. 16/17-28 (**Exhibit 1**) opposing the petition submitted by Linda Loza and her organization,
 2 Northgate Community Advocacy for our Public Schools (“petitioner” or “Northgate CAPS” or
 3 “NCAPS”), seeking to create a new unified school district and transferring the territory of the
 4 District containing five (5) schools to the new district. In essence, the Governing Board does not
 5 consent to the reorganization of the District as proposed by the petition or as it may change by
 6 action of the Contra Costa County Committee on School District Organization (“County
 7 Committee” or “Committee”).

8 **II. HISTORY**

9 The petition was filed on February 23, 2017 for determination of sufficiency as to the
 10 requisite number of signatures of registered voters. As noted on its face, it seeks to transfer the
 11 attendance areas of five (5) schools of MDUSD to form the self-styled “Northgate Unified School
 12 District” (“proposed new district”), which currently does not exist. The identified schools and
 13 attendance areas are those of Bancroft Elementary, Valle Verde Elementary, Walnut Acres
 14 Elementary, Foothill Middle, and Northgate High Schools.

15 Three (3) schools located in these attendance areas were not stated in the petition and the
 16 District objects to the petitioner’s position that these three (3) schools not be considered here.

17 First, Eagle Peak Montessori Charter School, a so-called “captive” or “dependent” charter
 18 school, remains a school of the District. It is located on District-owned property at the former
 19 Castle Rock School adjacent to Northgate High School.

20 Second and third, Oak Grove Middle School and Ygnacio Valley High School are located
 21 in the Northgate area petition by virtue of the provision seeking to include the attendance area of
 22 Bancroft Elementary School. Petitioner did not include these sites in its unofficial map presented
 23 in the petitioner’s 159 page report on the supposed feasibility of the new proposed district. Yet
 24 the fact remains that these two (2) secondary school sites are located in the attendance area of
 25 Bancroft Elementary School. More will be discussed on this topic below.

26 Two days of public hearings were held on May 2 and 3, 2017 with the Committee
 27 receiving many comments from the community. The primary purpose of the two-day initial public
 28 hearing was to seek these comments and views on the petition as it was presented after sufficiency

1 was found by the County Superintendent. At the Concord hearing, a significant majority of
2 members of the public opposed the reorganization.

3 The final action is to be taken within 120 days after May 2, 2017
4 (August 30, 2017) under section 35706 as follows:

5 [t]he county committee shall recommend approval or disapproval of
6 a petition to form one or more new districts or for the division of the
entire territory of a school district into two or more new or acquiring
districts, as the petition may be augmented, [].

7 The Committee must also follow section 35707, which, in relevant
8 part, states:

9 (a) [] [T]he county committee shall expeditiously transmit the
10 petition to the State Board of Education together with its
11 recommendations thereon. It shall also report whether any of the
following, in the opinion of the committee, would be true regarding
the proposed reorganization as described in the petition:

12 (1) It would adversely affect the school district organization of the
county.

13 (2) It would comply with the provisions of Section 35753 (the
14 nine/ten criteria).

15 We are now at the point at which the Committee must make its recommendation to the
16 State Board of Education (“SBE”) on approval or disapproval of the petition after reviewing nine
17 criteria for substantial factual support and compliance with section 35753 and, if appropriate,
18 augment the petition to conform to the Committee’s decision.

19 **III. ANALYSIS**

20 **A. The Ten (Nine Operative) Statutory Criteria.**

21 The District makes its final comments in this writing and by oral presentation on the
22 statutory criteria that the County Committee must find are substantially met or not in this
23 proceeding prior to recommending approval or disapproval of the petition.

24 These comments are based on the data and information from County Committee staff, the
25 District, and the petitioner. The District also responds to the report by School Services of
26 California, Inc. (“consultant” or “SSC”) issued August 8, 2017, noting that it found that two of the
27 nine criteria were not substantially met. The District contends that at least five other criteria are
28 not met and that SSC did not consider all of the circumstances. Other persons will provide further

1 evidence for the record on behalf of the District in addition to these Final Comments either as part
 2 of the District presentation or during public comments.

3 As noted before, the attendance areas are the Northgate High School, Foothill Middle
 4 School, Bancroft Elementary School, Valle Verde Elementary School, and Walnut Acres
 5 Elementary School areas. (Also, as noted above, petitioner did not include the Eagle Peak
 6 Montessori Charter School on the former Castle Rock School site, closed as a District school in
 7 1985, adjacent to Northgate High School. Nor did she account for Oak Grove Middle School and
 8 Ygnacio Valley High School sites, which are in the Bancroft attendance area. The petition does
 9 not suggest how those schools would be divided.)

10 The territory identified to be transferred from MDUSD to the proposed new district is
 11 located in the south central portion of MDUSD lying primarily in the City of Walnut Creek,
 12 although the school attendance areas do not coincide with the City’s boundaries. In fact, the
 13 school attendance boundaries for each level (elementary, middle, and high school) do not coincide
 14 with each other.

15 On March 22, 2017, the County Superintendent of Schools determined that the petition
 16 was initially sufficient for review and consideration by the County Committee under the relevant
 17 provisions of the Education Code. While the statutory conditions and the regulation adopted by
 18 the SBE couch the language in terms of a state actor, i.e., SBE, section 35707(a) requires that the
 19 County Committee find true whether the proposed action would: (1) adversely affect the school
 20 district organization of the county, and (2) whether it would comply with the provisions of section
 21 35753 enumerated in paragraphs (1) to (10), inclusive, of subdivision (a) of that section, such that
 22 they are substantially met.

23 We preliminarily discuss each criterion in turn, noting that there are actually nine operative
 24 criteria with the tenth criterion being a “catchall” provision permitting the SBE to create other
 25 criteria. The only current SBE created tenth criterion relates to an “exceptional situation” that may
 26 exist due to identified facts and circumstances. An “exceptional situation” does not appear in this
 27 petition or under any facts or circumstances currently known.

28 **1. The Reorganized Districts will be Adequate in Terms of Number of Pupils**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Enrolled.

MDUSD as of 2016-2017 enrolled 31,814 students. (CDE, Educational Demographics Unit, Data Quest, 2016-2017 – **Exhibit 2.**) The proposed new district, using the current enrollment on the CDE Data Quest website and minus intradistrict students residing in the remainder district, is projected to enroll about 3,800 students (adjustment due to residency and abrogation of intradistrict attendance with the proposed new boundaries). The guideline set by the SBE in California Code of Regulations, title 5, section 18573 (a)(1)(A) suggests that at least 1,501 students be enrolled in a unified district in order to be viable.

However, it is the District’s belief that, in any event, the projected level of enrollment at 3,800 will impact the new district’s ability to fund its schools and programs adequately. While the petition appears to meet the minimum attendance requirements under this condition, the magnitude of the shift would create a myriad of other issues described in subsequent sections and by other data presented at the public hearings.

District Position, Response to County Consultant, and Analysis of Petitioner’s

Proposal: It appears that the condition that adequate enrollment is maintained in both districts is substantially met. However, if cost, programs, and student needs are considered as noted below the creation of such a small district is not programmatically and financially viable.

2. The School Districts are Each Organized on the Basis of a Substantial Community Identity.

As noted in California Code of Regulations, title 5, section 18573 (a):

. . . (2) To determine whether the new district is organized on the basis of substantial community identity, the following criteria should be considered:

- (A) Isolation
- (B) Geography
- (C) Distance between social centers
- (D) Distance between school centers
- (E) Topography
- (F) Weather
- (G) Community, school, and social ties and other circumstances peculiar to the area.

(Emphasis added.)

1 Currently, the proposed new district lies solely within MDUSD. In addition, the proposed
 2 new district lies primarily, but not solely, within the city limits of the City of Walnut Creek.
 3 However, the vast majority of the proposed area lies between Lime Ridge Open Space and Shell
 4 Ridge Open Space backing up to Mount Diablo. Physically, the area is not easily accessible to the
 5 City Center of Walnut Creek to the southwest. Rather, the geography and topography focuses this
 6 area north and west toward both the Cities of Concord and Pleasant Hill. Those two cities are the
 7 two largest cities in the District and completely within the boundaries of MDUSD.

8 The residents of the Northgate area are connected to the greater MDUSD in myriad ways.
 9 Students and families across the District continually interact with each other. (736 students that
 10 comprise these school communities are currently inter-district transfers.) The manner in which the
 11 proposed new district establishes an entirely new entity will destroy otherwise cohesive
 12 communities and sever “community, school, and social ties”; the current identity that has been
 13 established and sustained, both in the Northgate area and district-wide.

14 a. *Highlands Elementary School*

15 The most significant obliteration of community that would be brought about by the
 16 proposed Northgate Unified School District (“NUSD”) is the dispersal of students and families
 17 from the cohesive community known as The Crossings.

18 The Crossings, a Concord neighborhood of approximately 1,062 single family homes
 19 (3,500-4,000 residents) is part of a long-existing school community with a defined and celebrated
 20 identity. Since the subdivision opened to residents in the early 1970s, The Crossings’ children
 21 have always attended Highlands Elementary School (“Highlands”).

22 As a result, Highlands maintains a cohesive, thriving school community, one of the largest
 23 PTAs in the District, robust after-school programs and extracurricular events, and a full offering of
 24 other activities for its students. The petition would not only remove The Crossings children from
 25 Highlands (a loss of about 203 students from the school), but would also disperse these students
 26 among the three elementary school campuses (Bancroft, Valle Verde, and Walnut Acres) proposed
 27 for the new district. (Indeed, no single site would have sufficient capacity to absorb this group
 28 without disruption of existing enrollment, even with the exclusion of current intra- and inter-

1 district transfers.) Children, ages five through eleven, who have always attended the nearby, local
 2 elementary school (Highlands) together, will now travel greater distances and be split between
 3 three campuses or requiring the movement of attendance boundaries in the new proposed district.

4 Compounding the situation further is the fact that the NCAPS proposal recommends that
 5 many Highlands Elementary School community members not be part of a vote should the process
 6 reach the voting stage. Active participation in the democratic process and a voice in school
 7 decisions are important values of the community. The NCAPS proposal greatly impacts this vital
 8 component of the community identity.

9 *b. Oak Grove Middle School and Ygnacio Valley High School*

10 The petition does not account for the treatment of these sites. Each is geographically
 11 located within the Bancroft Elementary School attendance area. As such, these sites may be
 12 included in property transferred to the new district. However, based upon the petitioners'
 13 statements, there is no intent for the new proposed district to provide educational services for the
 14 significant portions of the attendance areas of each site that are outside of their request. Over 690
 15 middle school and 1,150 high school students reside within this significant territory.

16 The proposed new district, as presented unofficially in the 159 page petitioners' report,
 17 would create profound isolation for Oak Grove Middle School and Ygnacio Valley High School.
 18 Not only would these MDUSD campuses become "island schools" within the new district (cut off
 19 from the rest of the District geographically), they would no longer exist in close proximity to
 20 another MDUSD middle or high school. In the worst case, the Contra Costa Centre community
 21 would lose its middle school and high school. Ygnacio Valley High School has been an integral
 22 part of the community since 1962. The site has hosted multiple presidential visits and is the home
 23 of long-standing sports programs which help create the fabric of the community.

24 As of now, Oak Grove Middle School and Foothill Middle School are approximately two
 25 miles apart from each other, as are Ygnacio Valley High School and Northgate High School.
 26 Should the new district be formed, Oak Grove Middle and Ygnacio Valley High Schools would be
 27 the only MDUSD middle and high school within a large radius.

28 Further, students at both Oak Grove Middle School and Ygnacio Valley High School

1 would attend class on campuses surrounded by a neighborhood that is part of an entirely different
 2 school district and community. Indeed, Oak Grove Middle School would fall on the other side of
 3 the BART tracks on its common boundary with the remaining MDUSD. This is yet another
 4 example of how the proposed new district fails to create a district formed on the basis of a
 5 singular, cohesive and logical community identity, and worse, leaves behind other communities
 6 that logically and geographically would belong in the proposed new district. This day-to-day
 7 reality will most certainly negatively impact the emotional well-being of students as well as the
 8 community identity of residents in both districts and likely result in further divisions already
 9 surfacing in the communities as reflected at the two days of public hearings on the petition on May
 10 2 and 3, 2017 and on social media.

11 *c. Mount Diablo Unified School District*

12 If the proposed new district comes to fruition, similar destruction of community identity
 13 will be felt by students and families both within the proposed district boundaries as well as for
 14 those remaining in the Mount Diablo Unified School District. Many MDUSD students' positive
 15 social identities are formed by their involvement with and membership in various teams, groups,
 16 and organizations that provide students meaningful opportunities to interact with fellow students
 17 in their school district (California Healthy Kids Survey, 2017). This disruption will be felt in
 18 areas including, but not limited to, athletics, the arts and academic programs.

19 For students at the nine MDUSD middle schools, the new after-school sports program has
 20 been tremendously impactful. Over 350 students participate in the soccer, basketball, and football
 21 programs, competing against other MDUSD schools and having the opportunity to develop skills
 22 and be part of a team. The sports program is offered free of charge to MDUSD families and works
 23 in large part because of the collegial planning by district school leaders. With only one middle
 24 school (Foothill) in the proposed Northgate Unified School District, it is unclear how Foothill
 25 students will continue to meaningfully interact with other area middle school students under
 26 district-supervised programs.

27 Middle school students are also connected through the award winning, after-school
 28 Robotics program funded by the Tesoro Corporation. During the summer months, three Robotics

1 camps are held: one at Valley View Middle School, one at Sequoia Middle School, and one at
2 Riverview Middle School. Middle school students from sites across the District collaborate at the
3 camps, and students from Foothill Middle School, specifically, work with students at Bay Point’s
4 Riverview Middle School.

5 The Mount Diablo Unified School District Honors Band offers instrumental music students
6 the opportunity to audition and perform with other student musicians across the District. Students
7 who participate in school Improv/Dramatic Arts teams and those enrolled in arts classes at one of
8 the five (5) district high schools regularly interact at district-sponsored competitions as well as at
9 regional festivals and conferences. Student athletes maintain a strong community district identity
10 as they compete in the Diablo Athletic League.

11 Each year, MDUSD hosts a variety of events that bring students and families together.
12 These events support the strong sense of community and connection that exists across various
13 neighborhoods and feeder patterns. Students and families look forward to the annual District
14 Science Fair as well as Art Shows, Parent Information Nights, and the all-district College
15 Information Fair. Further, parents at the five district high schools work collaboratively to create a
16 memorable Grad Night experience for all graduating seniors in the District. Each year, MDUSD,
17 in partnership with the Mount Diablo Education Association, hosts the District Academy Awards.
18 The gala event celebrates teachers, parents, community members, and volunteers and is
19 representative of the close bonds that exist between the various school communities.

20 *d. The Greater Community*

21 Residents who live in the proposed new district territory utilize services in the exact areas
22 that have been excluded from the proposed district, namely the Oak Grove Plaza Shopping Center.
23 Further, the Northgate area’s parks and recreational facilities are actively utilized by residents who
24 live all over the MDUSD territory. The creation of a school district that only serves Northgate
25 residents would be totally contrary to the daily interactions and experiences of the community
26 members who live there. Further, should the new district come to fruition, the formerly-existing
27 community identity of the Northgate residents would be drastically altered: the proposed district
28 severs the cohesive area in an illogical way, leaving significant portions of neighborhoods behind

1 and creating divided, non-cohesive groups where a singular and united community once thrived.

2 Athletic facilities like The Ultimate Field House, Heather Farm Aquatics Center, and
 3 Arbolado Park Soccer Fields are populated by residents who live all over the region. The
 4 championship aquatics, soccer, tennis, basketball, and baseball programs that thrive in the
 5 community do so with athletes from within the Northgate area and beyond. The creation of a
 6 “Northgate territory only” school district will impact community identity by sending a strong
 7 message of exclusion.

8 For students that participate in extra-curricular activities, like Boy Scouts of America, the
 9 formation of a new district would be disruptive and could impact participation. The Valle Verde
 10 Elementary School Cub Scout Pack, for example, has members from both Valle Verde Elementary
 11 and Eagle Peak Montessori School. Because Valle Verde Elementary has the Autism Magnet
 12 Program (with students from all over MDUSD) on its campus and because Eagle Peak is a district-
 13 wide charter school, the Cub Scout Pack currently has members from Walnut Creek, Concord,
 14 Pleasant Hill and Pittsburg. The den leader reports: “We are a community group. We do
 15 community service and field trips all over the district, and the boys and their families know each
 16 other and grow up together. My boys have good friends not just from down the street or around
 17 the corner, but from all over MDUSD. It adds a valued diversity to both our Pack and to our
 18 school community. As a Den Leader, I can say for a fact that one of our boys would be directly
 19 affected by this change.”

20 These are but a few examples to illustrate the real and practical problems created by the
 21 division that would result if the petition were recommended for approval. In summary, the
 22 proposed district is NOT organized on the basis of a substantial community identity. To the
 23 contrary, the division proposed is illogical, drawn along lines that separate neighborhoods and
 24 communities that formerly identified with one another, and creates division and disruption to
 25 formerly cohesive and unified communities.

26 **District Position, Response to County Consultant, and Analysis of Petitioner’s**
 27 **Proposal:** The inclusion of the entire attendance area of Bancroft School will cause a division of
 28 school centers and communities and the petition provides ill-defined parameters for the territory

1 proposed for reorganization. (See Attendance Area Map of Bancroft Elementary School – **Exhibit**
 2 **3.**)

3 As pointed out here, the Oak Grove Middle School (“OGMS”) will either be transferred to
 4 the proposed new district (see discussion under Criterion 3, below) or be separated by physical
 5 barriers from its proposed truncated attendance area. OGMS would be a peninsula surrounded by
 6 the proposed new school district, divided from all remaining MDUSD students by the BART
 7 tracks on the north side if not transferred to the new proposed district. Likewise, Ygnacio Valley
 8 High School (“YVHS”) will either be transferred to the proposed new district (Criterion 3, below)
 9 or surrounded on three sides by the proposed new district boundaries and virtually cut off from its
 10 proposed truncated attendance area.

11 Finally, it is projected that Highlands School just to the east of the proposed new district
 12 would lose approximately 203 students because The Crossings and Crystyl Ranch (which are in
 13 the City of Concord, not Walnut Creek) are included in the scope of the petition as written. While
 14 petitioner contends that the Northgate area is the community on which to focus, the County
 15 Committee must consider the disruption to and division of four (4) or five (5) other attendance
 16 areas in the remainder district.

17 Residents in the Northgate area do not engage in activities, shop, participate in events, or
 18 socialize solely within the boundaries of the proposed new district. The experience of community
 19 members is wide reaching and compromised of meaningful connections that extend far beyond the
 20 Northgate neighborhoods. Most residents clearly recognize that the character and identity of the
 21 community is shaped by many factors and agree that the broad experiences and daily interactions
 22 they have is what makes the community such a desirable place to live. Conversations with
 23 students and parents confirm that their strong ties to the community are shaped by school
 24 relationships and experiences. Furthermore, most residents abhor the idea of a proposed school
 25 district in their community that is so starkly different to MDUSD in ethnic, racial, and socio-
 26 economic makeup; a reality that has led to widespread community opposition to the petition
 27 reflected once again at the public hearings and on social media.

28 The isolation of remaining schools, geography, social center, and school center aspects

1 militate against a finding that the proposed new district would be organized on the basis of
 2 substantial community identity. In addition, even supplementing the petition to sever two (2)
 3 secondary schools from their communities would in practical effect remove these schools from the
 4 neighborhoods they serve. While being technically compliant with the “anti-leapfrogging”
 5 statutes (school district boundaries must be contiguous), it would shatter any connection between
 6 where the students live and where they go to school. Finally, Highlands School would lose one-
 7 third of its student population.

8 This condition, that the Districts are each organized on the basis of a substantial
 9 community identity, is not substantially met.

10 **3. The Proposal Will Result in an Equitable Division of Property and Facilities of**
 11 **the Original District or Districts.**

12 The proposal to split away approximately 12.1 percent of the school population and five
 13 (5) current schools of the District (and actually eight (8) schools including Eagle Peak Montessori,
 14 Oak Grove Middle School, and Ygnacio Valley High School) will entail a very complicated
 15 division of property. Various supporting divisions such as the District office and its various
 16 departments (such as Academic Support, Fiscal Services, Personnel, and Transportation, all
 17 providing the life blood for the schools) and the Maintenance and Operations Department at
 18 another site all exist in Concord some seven (7) miles away from the proposed area of the new
 19 district. It is not clear at this juncture how those departments will be “equitably divided” by
 20 physical location or even if they can be.

21 The alternative is that the new district will have to create such support departments from
 22 scratch. In all likelihood, there is little, if any, open, unused and available property that is within
 23 the proposed territory which could be used for a district office and support services, forcing the
 24 need to acquire property at what would likely be high market prices. In that case, the criteria
 25 below concerning cost to the state due to the reorganization, facilities cost, and a negative fiscal
 26 impact to the proposed new district would be significant. For example, on www.loopnet.com
 27 there is a Class “C” office building on North Broadway in Walnut Creek with 12,442 square feet
 28 advertised for sale at \$1.95 million. While this building is not in the proposed new district, it

1 reflects the area cost of over \$150.00 a square foot for office space in the area known as a
 2 constrained real estate location with little room to develop new administrative space.

3 More importantly, as written and apparently signed by the requisite number of registered
 4 voters, the petition would transfer Oak Grove Middle School and Ygnacio Valley High School to
 5 the new proposed district. As a result, as noted above, the proposed remainder district would have
 6 over 1,850 unhoused students at middle and high school levels (26 of the currently enrolled
 7 students in those schools reside in the new proposed district). There are no facilities in MDUSD
 8 which can accommodate those students in or near their residences.

9 Also, Eagle Peak Montessori Charter School, a dependent charter of MDUSD, would
 10 apparently lose its site, the former Castle Rock Elementary School. The charter school board will
 11 have to decide whether they are going to seek a waiver from the SBE to remain outside of the
 12 geographic boundaries of Mt. Diablo or go to the new proposed school district to get authorized as
 13 a charter school of that district.

14 **District Position, Response to County Consultant, and Analysis of Petitioner’s**
 15 **Proposal:** The District concurs with the SSC report on this criterion.

16 It is not shown by petitioner how the transfer will result in an equitable division of
 17 property and facilities and, as such, this condition is not substantially met.

18 **4. The Reorganization of the School Districts Will Preserve Each Affected**
 19 **District’s Ability to Educate Pupils in an Integrated Environment and Will**
 20 **Not Promote Racial or Ethnic Discrimination or Segregation.**

21 The proposed reorganization will result in significant demographic shifts from the existing
 22 make up of MDUSD which is highly problematic with respect to this condition.

23 The current overall MDUSD student population, using the demographic study numbers is
 24 36.5 percent Hispanic, 40.5 percent White, 15.1 percent Asian, 5.5 percent African American, and
 25 2.4 percent Other (Another Ethnicity, Two or More Races, or Race Not Stated). These
 26 percentages have been stable over the last three (3) years. (Three Year Trend, CDE, Educational
 27 Demographics Unit, Data Quest 2016-2017 – **Exhibit 4.**)

28 Reviewing the demographic study done by Eastshore Consulting attached to these Final
 Comments, the resulting new unified school district would be projected at 7.2 percent Hispanic,

1 65.5 percent White, 24.1 percent Asian, 1.9 percent African American, and 1.3 percent Other.

2 There is a startling and stark difference between the district enrollment for 2016-17 and the
 3 new district projected enrollment. The Hispanic enrollment would drop 29.3 percentage points.
 4 The Asian enrollment would increase 9.0 percentage points. The White enrollment would
 5 increase 25.0 percentage points.

6 In order to fully evaluate the proposed creation of a new unified school district from
 7 existing territory of the Mt. Diablo Unified School District, a site level analysis of the
 8 demographics of the proposed schools for transfer and schools with attendance areas overlapping
 9 the proposed transfer territory was conducted. The demographic analysis includes examination of
 10 the socio-economic characteristics of the existing student populations as currently constructed.
 11 Additionally, an examination of the residential addresses of the student populations was conducted
 12 to determine the numbers and characteristics of the students impacted by the proposed new district
 13 formation.

14 The analysis was conducted utilizing information in the MDUSD student database. While
 15 district-wide level analysis was not conducted, examination of the following schools sites was
 16 conducted:

- 17 • Bancroft Elementary School – Proposed for Transfer
- 18 • Valle Verde Elementary School – Proposed for Transfer
- 19 • Walnut Acres Elementary School – Proposed for Transfer
- 20 • Highlands Elementary School – Impacted by Enrollment Loss due to overlap
- 21 • Foothills Middle School – Proposed for Transfer
- 22 • Pine Hollow Middle School – Impacted by Enrollment Loss due to overlap
- 23 • Oak Grove Middle School – Impacted by Enrollment Loss due to overlap
- 24 • Northgate High School – Proposed for Transfer
- 25 • Ygnacio Valley High School – Impacted by Enrollment Loss due to overlap

26 Such data was sorted and cross referenced to residential address information to determine
 27 the impact of the division of the Mt. Diablo Unified School District on the student populations.
 28 Additionally, the information was analyzed to determine what unduplicated count percentages
 would result for the proposed new school district. Finally, the data was examined to determine the
 potential impacts to the existing special education student population at each site.

The demographic report is attached. (Demographic Analysis, 2017-2018, Eastshore
 Consulting, **Exhibit 5.**)

1 Charts in the Analysis Summary reflect the significant drop in racial and ethnic enrollment
 2 of the new district and a dramatic increase of White students (with a minor percentage increase of
 3 ethnic Asian American students). The analysis indicates that the resulting student population
 4 would be approximately 3,806 students. This is many students fewer than currently housed at the
 5 sites proposed for transfer (depending on which schools are transferred). The resulting student
 6 population of the new district would be 65.5 percent White and 24.1 percent Asian, an increase
 7 from the current 63.5 percent White and 24.0 percent Asian currently attending the five (5)
 8 schools stated in the petition. The percentage of African American and Latino students in the new
 9 district would be 1.9 percent and 7.2 percent respectively. This is a decrease from current levels of
 10 2.3 percent for African American students and 8.7 percent for Hispanic students. While these
 11 percentage shifts may not seem sizable, an examination of the students removed indicates a
 12 disproportionate impact on students within minority groups in almost every case with the
 13 magnitude varying by site. In no case does the proposed reorganization impact the majority group.

14 The analysis indicates that about 736 students would be displaced; assuming Oak Grove
 15 Middle School and Ygnacio Valley High School are not transferred. (Inclusion of those two sites,
 16 both of which are actually majority Hispanic, would further exacerbate the impact of the proposed
 17 transfer on such students). Of the 736 students displaced, the ethnic makeup is 5.4 percent African
 18 American and 18.9 percent Hispanic, a stark contrast to the current population makeup. The result
 19 would be the removal of 40.4 percent of the current African American population and 37.3 percent
 20 of the Hispanic population. While other groups comprise a statistically small portion of the current
 21 population, it should be noted that as proposed, the new district would displace 25.4 percent of the
 22 American Indian or Alaskan Native population and 26.3 percent of the Pacific Islander population.
 23 The comparable reductions in the White population would be only 13.4 percent while the
 24 reduction in the Asian population would amount to 17.0 percent of the current makeup. When an
 25 examination of who would be displaced is conducted, it is clear that certain groups are
 26 disproportionately impacted.

27 The proposed transfer would also result in a reduced unduplicated percentage for the new
 28 district to 11.4 percent of the population, down from the current level of 13.9 percent. This

1 represents the removal of approximately 185 free and reduced meal program participants and 66
 2 English learners. When examining the population removed, it is approximately 28.5 percent of
 3 such students who meet the unduplicated count criteria.

4 Specific to special education students, the five (5) sites would see a substantial 61.4
 5 percent reduction in special education students served going from a current population of 132 to
 6 approximately 51. It should be noted that a specialized autism program is hosted at one (1) of the
 7 sites which, unless it is the intent of the new district to replicate such a program for a significantly
 8 reduced population, MDUSD would be forced to relocate to another already impacted site outside
 9 of the territory transferred.

10 **District Position, Response to County Consultant, and Analysis of Petitioner’s**
 11 **Proposal:** In sum, the report submitted by petitioner contends that, since the ethnic and racial
 12 percentages would generally stay the same at each school site if a division were to occur, there is
 13 no impact on segregation. This is clearly not accurate given the makeup of the population
 14 displaced. Also, petitioner argues that, since MDUSD will remain less than 75 percent minority
 15 enrollment and the proposed new district will, at some future point, have less than 50 percent
 16 white enrollment, there is no problem. (The report relies on the feasibility study for the Santa
 17 Monica-Malibu USD split, which has never been accepted or approved by Los Angeles County or
 18 the SBE and reflects a much different community than MDUSD.)

19 In other words, the suggestion that the Committee and SBE simply ignore the creation of a
 20 school district with a drop of 29.3 percent in Hispanic enrollment and an increase in White
 21 enrollment at 25.0 percent and say there is no effect on segregation is odd, to say the least. The
 22 absurdity of that position is apparent on its face. This petition is clearly an exclusionary move as
 23 to all ethnic groups, except the Asian American group. Furthermore, the proposal overestimates
 24 the unduplicated percentage that would result in the new district, and as a result, also
 25 overestimates future revenue under the LCFE formula. Finally, the proposal does not address
 26 special education impacts, and specifically how existing programs for this sub-group will be
 27 accommodated for both existing and potentially displaced students and programs.

28 The consultant takes a cursory view of enrollment numbers and then simply splits the

1 districts in two to draw the conclusion that the overall numbers would change little. That analysis
 2 ignores the second part of this criterion that requires that the reorganization not promote
 3 segregation. The bleak numbers noted herein show that reorganization would violate this criterion
 4 and possibly federal law on the issue of segregation. This analysis also focuses on the enrollment
 5 of specific schools and not the synergy created when a district has a number of schools with
 6 differing, but active and involved populations acting on each other as noted in the discussion
 7 under Criterion 2.

8 The condition that the proposed reorganization of the creation of a new separate unified
 9 school district will preserve each affected district's ability to educate students in an integrated
 10 environment and would not promote racial or ethnic discrimination or segregation is not
 11 substantially met.

12 **5. Any Increase in Costs to the State as a Result of the Proposed Reorganization**
 13 **Will Be Insignificant and Otherwise Incidental to the Reorganization.**

14 The Contra Costa County Office of Education staff in the information provided on
 15 April 21, 2017 under section 35705.5 stated:

16 The per pupil funding as determined using an estimate based on the
 17 Local Control Funding Formula for the Mt. Diablo Unified School
 18 District is \$8,836 per student. The estimated per pupil funding for
 19 the proposed Northgate Unified School District is \$8,150 per
 20 student. The effect of the petition on the Mt. Diablo Unified School
 21 District changes the current estimated per pupil funding from \$8,836
 22 to \$8,969, an increase of \$133 per student.

23 The cost to the State if the transfer is made and the students are generated at the expected
 24 rate would entail cost to the State on an ongoing basis. As noted in the discussion under Criterion
 25 6, below, the reconstitution of the current programs of MDUSD serving the Northgate area will
 26 impose a significant cost with the new proposed district having a much lower LCFF funding
 27 stream.

28 A thorough analysis of special education or remaining categorical programs (not covered
 by LCFF) will show an additional burden to the State for this type of funding.

The unduplicated student percentages will change, potentially resulting in MDUSD
 becoming eligible for the LCFF concentration grant. If so, this is an extra cost to the State.

1 (We acknowledge, but do not agree with, the CDE’s view that LCFF calculations are not to
2 be considered under this condition. It would seem that the County Committee is charged with the
3 duty to consider all relevant information in determining whether this condition is substantially met
4 or not.)

5 The increase of facilities cost is discussed in Criterion 7, below.

6 **District Position, Response to County Consultant, and Analysis of Petitioner’s**

7 **Proposal:** The condition that the proposed transfer will not result in any significant increase in
8 costs to the State due to the proposed transfer of territory is not substantially met.

9 **6. The Proposed Reorganization Will Continue to Promote Sound Education**
10 **Performance and Will Not Significantly Disrupt the Educational Programs in**
11 **the Affected Districts.**

12 Staff members of the MDUSD believe that a transfer of this territory would affect the
13 educational performance of their students or significantly disrupt the educational programs for the
14 students of the proposed new district.

15 In December 2016, the Special Education Department did an analysis of the possible
16 effects showing that significant programmatic changes would lead to less special education
17 programming for the new proposed district. (Analysis of Northgate Related Special Education
18 Programs, December 2016, **Exhibit 6.**) This report highlights that programs and specialized staff
19 are often shared among multiple sites which are not in alignment with the proposed territory
20 transfer. This may result in the loss of detailed individual knowledge for students in the most need.

21 Programs which are centrally supported and which would be moved to other locations and
22 lost to the five (5) Northgate feeder elementary schools include:

- 23 • Dual Immersion Language Program at Bancroft
- 24 • Garden education program at Bancroft (supported jointly with district and site funds)
- 25 • Vocal Music – 1st–5th grades
- 26 • Instrumental Music – 4th and 5th grades
- 27 • Library with certificated Librarian - 1st–5th grades
- 28 • PE Specialists – 4th and 5th grades once per week
- Counselors
- Intervention Services from Resource Specialists from general education students (amount varies per site)
- Site Technology Support
- Teacher Coaching – over 25 teachers supported by supplemental and restricted funds

- 1 • Maker Spaces (Majority of materials are funded by site but district funds are also
- 2 used. Some materials were also funded through Donors Choose, which is available
- 3 to all schools.)
- 4 • \$1.9 million dollars of CTE Incentive grant funds to support career exploration,
- 5 academy and pathway programs
- 6 • The CTE Programs at Northgate also include Veterinary Science (the only CTE
- 7 course of this nature offered in MDUSD) and Careers in Teaching
- 8 • ELD Support Teachers and Assessment Center to support needs of English learners
- 9 and their families
- 10 • Centrally supported summer school and supplemental after school tutoring
- 11 programs
- 12 • Middle school intramural athletics
- 13 • Robotics programs at Northgate district schools would no longer be included in the
- 14 MDUSD partnership/grant with Tesoro. The new district would have to apply to
- 15 Tesoro to be reconsidered. MDUSD provides central funding for teachers to attend
- 16 conferences
- 17 • Centrally supported conference attendance and participation in professional
- 18 development

19 The proposed new district would have to find its own funding to continue these activities,
20 supports, and programs, which will be problematic as noted in the Criterion 9 discussion, below.
21 Those items supported by supplemental or federally restricted funds may not be available due to
22 the demographics of the Northgate area.

23 Many services provided under current MDUSD programs would depend on what the new
24 proposed district wanted to provide. All athletics would be affected. The new district would need
25 to provide alternative education options, online credit recovery, summer school programs, and
26 secure funding for Career Technical Education (“CTE”) programs. CTE programs currently at
27 Northgate include Sports Medicine and Engineering. These are also offered at other high schools,
28 and students wishing to stay in these pathways would need to transfer to other high schools if the
new district is not able to maintain the pathways. New computer science courses, partially
supported by district CTE funds, would be affected. These CTE Programs at Northgate also
include Veterinary Science (the only CTE course of this nature offered in MDUSD) and Careers in
Teaching. MDUSD College & Career staff is currently working with Northgate High School
teachers to support them through obtaining CTE credentials in order to access Carl Perkins K-12
grant funding for their schools.

Investments into instructional and information technology and technology support staff
continue to increase in MDUSD. Recent additions to Technology and Information Services

1 (“TIS”) have included two (2) Site Tech I’s, ten (10) Network Tech I’s, one (1) Network Tech II,
 2 and one (1) Technology Project Manager. More than \$10 million has been invested into school
 3 and district tech infrastructure through Measure C and other funding sources. A new district
 4 would have to develop these resources separately to continue supporting the established
 5 technology plan for the schools upon separation from the district.

6 **District Position, Response to County Consultant, and Analysis of Petitioner’s**

7 **Proposal:** As CDE notes in its School District Organization Handbook (2016), Chapter 6, page
 8 92: “. . . if reorganization provides for a richer curriculum, more course offerings, and greater
 9 resources, the likelihood that educational performance will increase is enhanced.”

10 In this petition, the resulting reorganization, if approved by the SBE and passed after an
 11 election, would cause a narrower curriculum, fewer course offerings, and fewer resources to the
 12 proposed new district. Hence, educational performance will likely be diminished.

13 The consultant acknowledges that program impacts are difficult to quantify and that
 14 petitioner simply states that there will be short-term impacts to programs if reorganization were to
 15 occur. However, like petitioner, the consultant identifies no specific plan to insure that
 16 programmatic impacts are limited for short or long term. More importantly, as noted above, there
 17 will be a significant impact on special education programs. By federal and state law, special
 18 education services cannot be terminated without Individual Educational Program (“IEP”) changes
 19 adopted in each child’s case by an IEP Team. There is no indication how this would occur in the
 20 case of reorganization. This is massive exposure to litigation and cost as well as a programmatic
 21 nightmare.

22 Petitioner’s report goes on at some length about academic performance and test scores
 23 from the previous paradigm. It then acknowledges the extensive programs currently offered in the
 24 schools as they exist. Tellingly, the report concludes “providing these centralized services . . . will
 25 not be easy. . . .” The “plan” to do so is uncertain and vague and seems to rely on the County
 26 Office of Education.

27 The condition that the proposed reorganization will continue to promote sound education
 28 performance and will not significantly disrupt the educational programs in the districts affected is

1 not substantially met.

2 **7. Any Increase in School Facilities Costs as a Result of the Proposed**
3 **Reorganization Will Be Insignificant and Otherwise Incidental to the**
4 **Reorganization.**

5 As noted above, the creation of a new unified district will require the creation of new
6 administrative support structures and departments along with acquisition of new facilities to house
7 those operations. See Criterion 3, above. Additionally, depending upon the determination of
8 which sites will be transferred, new facilities may be required to accommodate the 500 to over
9 2,000 displaced students resulting from the formation of the new district.

10 MDUSD has received authorization by the voters for \$528 million in general obligation
11 bonds, all of which were issued, and which will make this source of financing unavailable to the
12 new proposed district. Additionally, while a district-wide Mello-Roos special taxing district was
13 approved by two-thirds of voters in 1989, providing for an additional \$90 million in Special Tax
14 bonds, all of these bonds have been issued and the responsibility for repayment terminates in
15 2024. SSC notes that division of this obligation is not legally possible at this time.

16 A new general obligation bond election requiring a 55 percent majority vote under
17 Proposition 39 would need to occur for the proposed district to access any new bond funding.
18 Based upon an analysis of the projected assessed values for the new district, it would have an
19 available net bonding capacity of just \$83.6 million (based upon 2016-2017 valuations).
20 Projection of a nominal new bond program would produce approximately \$93 million over a
21 number of years utilizing the Proposition 39 maximum tax rates of \$60 per \$100,000 of assessed
22 value. Given the typical home value of \$500,000 in the proposed territory, this would equate to a
23 \$300 tax per household.

24 Also, once again, there appears to be little open, unused property that is within the
25 proposed territory which could be used for a district office and support services, forcing the need
26 to acquire property at current high market prices with an estimated cost over \$10 million.

27 Furthermore, if MDUSD would lose either Oak Grove Middle School or Ygnacio Valley
28 High School (or both), it would likely require the acquisition and construction of two additional
sites to accommodate this displaced population. While it is projected that MDUSD would have a

1 remaining bonding capacity of roughly \$383 million, a nominal program utilizing the maximum
 2 allowable Proposition 39 tax rates would generate more bonding, \$426 million, than for which
 3 there is capacity (assuming a 55 percent voter approval). This would be at the expense of other
 4 maintenance needs which are traditionally funded by such bond sources and puts the remaining
 5 MDUSD at a disadvantage with a larger portion of lower valued properties than the proposed new
 6 district.

7 **District Position, Response to County Consultant, and Analysis of Petitioner’s**

8 **Proposal:** The District concurs with the consultant’s analysis under this criterion.

9 In addition, petitioner simply ignores the need for administrative support facilities and
 10 discusses only student housing in the 159 page report. As noted above, this is a serious omission
 11 in relation to supporting students and the instructional mission of any school district.

12 The condition that any increase in school facilities cost will be insignificant or otherwise
 13 incidental to the proposed transfer of territory is not substantially met.

14 **8. The Proposed Reorganization is Primarily Designed for Purposes Other than**
 15 **to Significantly Increase Property Values.**

16 As to this condition, the District has studied and obtained a report of Eastshore Consulting.
 17 (Analysis of Northgate Area Tax Roll for 2016-2017 (July 2017) - Exhibit 7.)

18 The assessed valuation (AV) of the proposed new school district is \$6,716,143,679 (over
 19 \$6.7 billion) (2016-2017) providing average AV per projected enrolled student of \$1,566,996
 20 (over \$1.5 million). The AV of the proposed remainder district is \$30,773,962,895 (over \$30.7
 21 billion) providing average AV per projected student enrollment of \$1,117,915 (over \$1.1 million).
 22 The AV difference is \$449,081 per student providing another stark indication of the
 23 socioeconomic impact of the proposed severance. It also raises an inference that this petition is
 24 primarily directed at forming a school district with much higher overall property values.

25 **District Position, Response to County Consultant, and Analysis of Petitioner’s**

26 **Proposal:** While the petition states that this request is premised on community needs and
 27 academic improvement, the 50 percent differential in AV raises the issue that there may be an
 28 underlying motivation to improve the values of the homes in the proposed new school district.

1 The consultant analyzes similar numbers based on the AV per parcel. However, it is not
2 clear from the state of the evidence whether this condition is or is not substantially met.

3 **9. The Proposed Reorganization Will Continue to Promote Sound Fiscal**
4 **Management and Not Cause a Substantial Negative Effect on the Fiscal Status**
5 **of the Affected Districts.**

6 MDUSD has endeavored during the Great Recession beginning in 2008 to operate in a
7 fiscally prudent manner. It has, unlike some other school districts, maintained a prudent reserve
8 and operated the school programs within its means. It has been able since 2013 to reinstate
9 District funded health care coverage for employees and is now able to provide substantial salary
10 increases for all of its bargaining units after many years of no salary increases. Nevertheless,
11 given the uncertain fiscal climate now after three years of increased State support, school districts
12 must carefully plan for the next three years as the State is projecting a slowing economy in the
13 immediate future. (See MDUSD, Second Interim Report, dated March 13, 2017, and adopted
14 Budget 2017-2018, dated June 28, 2107. <http://www.mdusd.org/fiscalhome>.)

15 Despite the public assertions by the petitioner that the District is facing financial peril,
16 MDUSD is simply following patterns dictated by the State and the LCFF funding model. Any
17 analysis of similarly sized districts would indicate that MDUSD’s projected spend down of
18 accumulated fund balances will mirror that of others in its cohort. As with many other districts
19 throughout the State (as well as what would be required by any newly created district), the realities
20 of PERS and STRS increases combined with the restoration of programs curtailed in the Great
21 Recession require some draw down of fund balance. In fact, good long-term budgeting “best
22 practices” would support the latest multi-year projections analysis to allow governing boards the
23 opportunity to amend plans and evaluate programs prior to any fiscal crisis actually occurring. To
24 impugn a district—which has received positive certification of its budget from the County Office
25 and is planning for the purported reduction in State funding growth—is, at best, disingenuous.
26 Failing to plan for projected reductions in the rate of State funding growth would be irresponsible
27 and not allow the MDUSD Board the ability to adapt to circumstances beyond its control.

28 That being said, MDUSD projects a stable, positive budget for the next three fiscal years.
(Multiple Year Projection, June 26, 2017, adopted by the Board, and Financial Status of the Mt.

1 Diablo USD, **Exhibit 8.**)

2 Additionally, the discussion in the SSC report about the “deficit” is gratuitous and
 3 irrelevant to this criterion. Whether there is a current budget plan and projection for the next three
 4 years has no bearing on the reorganization which, if approved at all levels and voted on by the
 5 electorate, would not occur in five to seven years.

6 The bottom line is that the annual LCFF revenue per ADA for each enrolled student is
 7 projected to be significantly less for the new proposed district than is currently provided to
 8 MDUSD. Even based upon the overly optimistic projections provided by the petitioner (partly
 9 due to the overestimation of population by several hundred students and partly due to errors in the
 10 computation of the number of unduplicated students population), the per pupil funding rate will
 11 drop to \$8,150 per student, as opposed to the \$8,969 estimated per pupil funding for the remainder
 12 of MDUSD (slightly higher than currently provided). (See Information Required under Education
 13 Code section 35705.5(b) dated April 21, 2017.)

14 Given its smaller size and the lower LCFF ADA, the new proposed district will face
 15 daunting times during its initial setup and for an ongoing period of time after reorganization.

16 While it may be viable to obtain a parcel tax (despite the petitioner not considering it
 17 necessary), it should be noted that the implied funding differential would be roughly \$819 per
 18 student. For a total of approximately 3,900 students, this would equate to \$3.194 million annually.
 19 To replace this revenue would require a parcel tax of \$266 per parcel, assuming no exemptions
 20 and uniform application. In combination with a potential need for an additional bond program, the
 21 total additional tax cost to the typical home is projected to be over \$500 per year for the next 25
 22 years or more to equalize revenues and replicate existing administrative and support facilities.

23 Petitioner mentions efforts to pass a parcel tax to fund supplemental programs and a
 24 special tax to fund new bond issuances for facilities. However, as noted, a parcel tax takes a 66.67
 25 percent vote to pass. A tax for general obligation bonds requires a 55 percent majority vote.
 26 Given those numbers and the necessity of an election in each case, the County Committee cannot
 27 recommend formation of a new district based on something that does not exist now and may very
 28 likely not exist in the future.

1 Once again, the new proposed district would incur, at a minimum, substantial costs in
2 creating new administrative and school support systems and the reconstitution of legally required
3 special education programs, as noted above.

4 For example, the proposed new district will be required to hire at least five (5) new
5 administrators (and maybe more) with an annual, ongoing impact of over \$1 million when salary
6 and benefits are added. The list below, reflecting typical salaries of a district (Martinez Unified
7 School District) of the proposed size, projects this cost. (Administrative Salary Schedule 2016-
8 2017, **Exhibit 9**.)

9 Superintendent	\$204,000 (2015-2016)
10 Chief Business Officer	\$158,644 (2016-2017)
11 Chief Technology Officer	\$158,644 (2016-2017)
Director, Curriculum	\$148,487 (2016-2017)
Director, Special Education	\$148,487 (2016-2017)

12 Also, as noted in Criterion 7, above, it appears there will be a significant increase in
13 facilities cost to house these and other support staff and it is unclear whether sufficient funds
14 would be available to cover those costs as well.

15 **District Position, Response to County Consultant, and Analysis of Petitioner’s**
16 **Proposal:** The consultant projects that the proposed new school district would incur \$3.2 million
17 dollars in administrative functions (including, perhaps, the \$1 million noted above) not currently
18 accounted for, yet opines that this criterion is substantially met. With the lower LCFF per ADA
19 entitlement and the increased cost for staff and facilities, it is difficult to determine how such a
20 recommendation could be made as to the proposed new district. Reorganization, if recommended
21 by this Committee and approved by the SBE and the voters, would create a new district of very
22 questionable fiscal stability.

23 The condition that the proposed transfer of territory will continue to promote sound fiscal
24 management and not cause a substantial negative effect on the fiscal status of the proposed district
25 or any existing district affected by the proposed reorganization is not substantially met.

26 **10. Any Other Criteria as the State Board may, by Regulation, Prescribe.**

27 During the review of this matter, the County Committee may consider and apply section
28 35573(b), which states:

1 (b) The State Board of Education may approve a proposal for the
2 reorganization of school districts if the board determines that it is
3 not practical or possible to apply the criteria of this section literally,
4 and that the circumstances with respect to the proposals provide an
5 exceptional situation sufficient to justify approval of the proposals.

6 California Code of Regulations, title 5, section 18573(b) states, in relevant part:

7 (b) The Board may waive the criteria specified in subsections (a)(1)
8 through (a)(5) of this section and may approve a proposal or petition
9 . . . if the Board determines circumstances with respect to the
10 proposal, petition or appeal provide a sufficient exceptional
11 situation.

12 (Emphasis added.)

13 **District Position:** There are no facts or circumstances in this record that would trigger the
14 analysis of whether it is not practical or possible to apply the statutory criteria literally. There is
15 no exceptional situation here.

16 **B. Section 35705.5 Powers and Content of Petition.**

17 Section 35705.5, in relevant part,¹ states:

18 (a) The county committee may add to the petition any of the
19 appropriate provisions specified in Article 3 (commencing with
20 Section 35730) that were not included in the petition as filed and
21 may amend any such provision that was so included.

22 (b) At least 10 days before the public hearing, or hearings, on the
23 petition, the county committee shall make available to the public and
24 to the governing boards affected by the petition a description of the
25 petition, including all of the following:

26 (1) The rights of the employees in the affected districts to continued
27 employment.

28 . . .

(5) A description of the territory or school districts in which the
election, if any, will be held.

(6) Where the proposal is to create two or more new districts,
whether the proposal will be voted on as a single proposition.

As the Governing Board opposes the petition, we will comment only on those matters in
section 35705.5 on which the District has views.

¹ The District has no position on the remaining provisions of section 35705.5 since it opposes the creation of the new
district and believes those determinations are not necessary.

1 **1. The Rights of the Employees in the Affected Districts.**

2 As proposed, the petition seeks to split off 12.1 percent of student enrollment and about 14
3 to 18 percent, by assessed value (depending on the final boundaries), of the current District
4 territory. School districts are labor intensive undertakings. As a result, the division of assets, if
5 the petition were successful, would have an enormous disruptive effect on the certificated and
6 classified employees of the District.

7 Section 35555 sets forth the rights and status of certificated employees of the previous
8 district, both permanent and probationary. Permanent certificated employees have the right to
9 elect to remain in the previous remaining district by February 1 in the school year prior to the first
10 school year of the new district. Probationary certificated employees would remain in the schools
11 to which they were assigned unless non-reelected or non-reemployed by the subsequent
12 employing district. It is not clear how this statute would apply to the numerous itinerant teachers
13 and other professional specialists who provide services on a district-wide basis, but serve the
14 students of the five (5) schools. In other words, it very well may be that the certificated employees
15 of the current schools and itinerant services departments subject to the petition could elect not to
16 transfer to the new district. Also, the new or remaining district governing boards may elect to
17 release a number of probationary certificated employees in order not to be overstaffed. This could
18 cause much confusion, disruption, and delay in staffing the new and the remaining district. Also,
19 it could lead to layoffs of certificated employees by the original district.

20 Section 35556 sets forth the rights of classified employees. In some ways, it is even more
21 convoluted than section 35555. This is due to the fact that a large number of classified employees
22 are not regularly assigned to the school sites, but rather function in school support roles at the
23 District office or other departments of the District serving all schools. Like certificated
24 employees, these classified employees retain employment rights, but determining the retention of
25 those classified employees and any new assignments may become problematic given the unknown
26 status of the budgets of the two proposed districts.

27 **2. Area of Election and Voting as Single Proposition.**

28 The District Board agrees with the recommendation of County staff that an election (if the

1 criteria were all found to be substantially met, a point not conceded here and very much in
 2 contention) would be held within the entire area of the current MDUSD. A truncated scope of
 3 election would disenfranchise the estimated 85 percent of the remaining voters in the District who
 4 would be affected by the proposed reorganization.

5 It is not proper to hold the election solely in the Northgate area, primarily because of the
 6 practical effects on District students and parents, employees, and members of the community
 7 occasioned by a removal of a large part of a currently functioning and successful school district.
 8 Some of the effects include, but are not limited to, the cost of a division of assets, the disruption of
 9 programs, the cost of a new district administrative staff and new support facilities, and the
 10 reassignment of staff and students. (These are fleshed out in the report under section 35753 by
 11 School Services of California, Inc.) The entire electorate should be involved in deciding whether
 12 this proposed momentous shift of public education of the children in the Mt. Diablo area and the
 13 imposition of a large, unknown cost will occur.

14 Additionally, there are statutory and constitutional issues on this matter.

15 In addition to section 35705.5, the applicable statutes are:

16 Section 35732 states:

17 Plans and recommendations may include a provision specifying the
 18 territory in which the election to reorganize the school districts will
 19 be held. In the absence of such a provision, the election shall be held
 only in the territory proposed for reorganization.

20 Section 35733 states:

21 Whenever the recommendation is to divide the entire territory of an
 22 existing school district into two or more separate school districts, the
 23 recommendation may provide that the plans and recommendations
 be voted upon as a single proposition.

24 These statutory provisions require a recommendation by the Committee of the location and
 25 scope of any election since the petition did not state it. (Once again, this assumes that all criteria
 26 are found to be substantially met and, once again, this point is not conceded and very much in
 27 contention.) In our view, the “territory proposed for reorganization” stated in section 35732 is the
 28 entire District since the petition seeks to split the District into two new unified school districts.

1 This view is supported by the language in the following section 35733 stating that the division of
 2 an existing district may be accomplished by a single proposition at an election.

3 In addition, the resulting ethnic population of students would shift dramatically with this
 4 proposed reorganization. In just one example, the Hispanic percentage of students enrolled in the
 5 District is 41.8 percent, based on the most recent year for enrollment (2016-2017). The newly
 6 formed district would be 7.3 percent Hispanic with the loss of intradistrict students. This is a
 7 significant impact and will have constitutional ramifications.

8 If the Committee were to limit the election to the Northgate High School area, this would
 9 infringe on the right to vote of all District residents. As the California Department of Education
 10 notes in its School District Organization Handbook (2016) in Chapter 7 at page 115:

11 . . . [T]he court in LAFCO² recognized federal case law reasoning
 12 that, even though state government has a wide latitude in creating
 13 various types of political subdivisions, that latitude must necessarily
 14 be qualified by a state’s fundamental constitutional obligation to
 15 avoid racial or other invidious discrimination. (LAFCO, *supra*, at
 16 pages 915, 916.)

(Emphasis added.)

17 The District requests that the Committee add and confirm the provision calling a District-
 18 wide election in the unlikely event that all of the required criteria are found to be substantially met.

19 **C. California Environmental Quality Act (“CEQA”).**

20 As we currently understand the view of the CDE of the reorganization statute, the CEQA
 21 process is completed at the SBE level, but the District wants to ensure that the issue was raised
 22 here at the earliest stage and preserve its rights for a challenge.

23 A petition to reorganize a school district or districts is a “project” under CEQA requiring
 24 the statutory and regulatory process to be followed in determining what level of review must be
 25 utilized. (*Fullerton Joint Union H. S. D. v. State Bd. of Education* (1982) 32 Cal.3d 779, 795, 808
 (majority holding when concurrence counted); *Save Our Schools v. Barstow Unified School*

26 ² *Board of Supervisors of Sacramento County, et al. v. Local Agency Formation Commission (LAFCO)* (1992) 3
 27 Cal.4th 903 considering the holding of *Fullerton Joint Union H.S.D. v. State Bd. of Education* (1982) 32 Cal.3d
 28 779.

1 *District Board* (2015) 240 Cal.App.4th 128, 137-138 (school district CEQA preliminary analysis
 2 even if action may be categorically exempt); see *San Lorenzo Valley C.A.R.E. v. San Lorenzo*
 3 *Valley U.S.D.* (2006) 139 Cal.App.4th 1356, 1372-1373 (same).)

4 It is safe to say that at least 14 percent to 18 percent of the territory of the current District
 5 would be severed away by any approved action to reorganize, depending on the County
 6 Committee recommendation on the actual boundaries. There are also data to indicate that some of
 7 those current 4,286 students would not be residents of the proposed new district and some students
 8 who attend other schools in the District would be residents of the five (5) identified school
 9 attendance areas in the petition. This could cause a large shift in traffic patterns on local roads
 10 such as the impacted Ygnacio Valley Road. Another example is the BART tracks north of Oak
 11 Grove Middle School (a facility in the Bancroft Elementary School attendance area) which form a
 12 physical barrier and its attendant access restrictions between Oak Grove and the proposed
 13 remaining MDUSD. These and other changes will affect air quality and greenhouse gas
 14 emissions. Also, the shift will entail the acquisition of new facilities to house academic and
 15 business support staff, which will entail attendant environmental impacts.

16 We believe that this data when fleshed out by further research will show that, through a
 17 preliminary review under CEQA, an initial study is required and there is no exemption for the
 18 proposed action. While it is too soon to make a definitive statement, given the numbers noted
 19 above, at a minimum, a traffic study and possibly other studies of other environmental impacts
 20 will need to be undertaken. It remains to be determined whether those impacts may be properly
 21 identified and possibly ameliorated by measures included in an appropriate mitigated negative
 22 declaration or a full environmental impact report.

23 It is also the District's contention that the reorganization statute, by placing CEQA
 24 responsibility at the SBE level, contravenes the strong public policy to have the environmental
 25 review at the earliest stage. Here, the County Committee is making a recommendation without
 26 any environmental review or study. This simply does not comport with the policy and purposes of
 27 CEQA and invalidates any recommendation to SBE.

28

1 **D. The County Committee's Authority and Duty.**

2 The Committee has the authority and the duty to review data, create an administrative
3 record, and determine if the nine (9) operative criteria are substantially met prior to making a
4 recommendation on the petition.

5 Even if the nine (9) operative criteria are found to be substantially met, the statutory
6 scheme still provides the discretion to the County Committee to recommend approval or
7 disapproval of the petition and the plans and recommendations prior to transfer to SBE under
8 section 35708.

9 **IV. CONCLUSION**

10 The County Committee should not approve the petition going forward for each, any, or all
11 of the reasons stated herein.

12
13 Dated: August 25, 2017

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

14
15 By: 

16
17 Lawrence M. Schoenke
Attorneys for MT. DIABLO
UNIFIED SCHOOL DISTRICT

18
19
20
21
22
23
24
25
26
27
28