



July 21, 2020

Submitted Via Position Letter Portal

Honorable Mike McGuire, Chair
Senate Governance and Finance Committee
State Capitol, Room 408
Sacramento, CA 95814

RE: AB 3312 (Assembly Member Gray): Oppose Unless Amend

Dear Senator McGuire:

We write to express an oppose unless amend position on Assembly Bill 3312. The Bill would authorize annexation of the main University of California, Merced campus into the City of Merced, notwithstanding the general requirement that the annexed property be contiguous with the City, and despite the City's failure to comply with its obligations under SB 244 (2011) to identify disadvantaged unincorporated communities (DUCs) in its sphere of influence and analyze service deficiencies.

Leadership Counsel for Justice and Accountability ("LCJA") works alongside residents of disadvantaged communities in the San Joaquin and East Coachella Valleys to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place. In Merced County, LCJA works with residents living in the City of Merced, as well as the unincorporated communities of Delhi, Planada and Beachwood-Franklin. Community residents we work with have an interest in ensuring that development is equitable, and that land use policies and decisions do not prolong, perpetuate, and exacerbate existing disparities in basic services and infrastructure.

Several neighborhoods within the City of Merced's sphere of influence lack basic services including wastewater service and drinking water service. These households are at higher risk of impacts including dry wells caused by drought or overdraft, drinking water contamination, and public health and water quality impacts caused by failing and/or improperly maintained septic tanks. Yet the City of Merced has not attempted to improve the infrastructure within city limits to ensure that all existing communities have an opportunity to be annexed and/or receive basic municipal services.

AB 3312 should be amended to require that the City of Merced comply with the requirements of SB 244 (2011) before or in conjunction with the proposed annexation. SB 244 requires cities to identify and analyze deficiencies and inequalities in DUCs, including an assessment of access to

vital public services including access to safe water and wastewater infrastructure. Specifically, cities must complete all of the following when they update their housing element:

- (1) In the case of a city, an identification of each island or fringe community within the city's sphere of influence that is a disadvantaged unincorporated community. ... This identification shall include a description of the community and a map designating its location.
- (2) For each identified community, an analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies.
- (3) An analysis, based on then existing available data, of benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible.¹

The City of Merced has not complied with these requirements despite updating its housing element in 2016.² Instead of identifying DUCs in its sphere of influence and analyzing service deficiencies, the City relied upon a Merced LAFCo analysis that identified “potential DUCs in the Merced area,” while at the same time noting that the LAFCo map is based on Census level data, and that “[a] more detailed review may alter the areas shown since the census data is at a fairly gross level and does not necessarily accurately depict specific communities of concern.”³ Rather than even committing to completion of the DUC analysis that SB 244 requires, the City instead committed that “[w]hen the City receives annexation applications for areas adjacent to the potential DUC’s noted in [the LAFCo map], the City will require the project applicants, under City direction, to prepare detailed studies of the census data to determine if indeed those areas qualify as a DUC under State Law.”⁴

The state should not make an exception to the requirement that annexations be contiguous with the City when the City has not complied with its existing obligations to map DUCs in its sphere of influence, analyze service deficiencies, and analyze financing alternatives to make extension of services financially feasible.

We note that this is not a merely academic exercise. Though we do not have clear data on how many DUCs in the City's sphere of influence lack basic services, the City acknowledged in its housing element that “[b]ecause all of these [DUCs] were developed in the County without adhering to City development standards, it is likely that most of these areas lack sewer and water

¹ Government Code § 65302.10(b).

² City of Merced Housing Element (July 18, 2016), available at <https://www.cityofmerced.org/Home/ShowDocument?id=4662>

³ *Id.* at p. 9-105.

⁴ *Id.*

service, sidewalks, curb & gutters, street trees, fire hydrants, street lights, etc.”⁵ There are at least 47 DUCs in Merced County alone, with 15% of the countywide population living within these DUCs.⁶

SB 244 sought to address and remediate the practice of cities excluding DUCs in their growth plans and infrastructure development.⁷ The City of Merced should not be permitted to expand its boundaries without addressing the basic service deficiencies in fringe and island communities bordering the City of Merced and unincorporated communities between the City of Merced and proposed annexation.

Accordingly, to ensure that the City of Merced complies with its obligations with respect to DUCs in its sphere of influence before the state makes an exception to facilitate the proposed annexation, we recommend amendments to AB 3312 to require at least three conditions for annexation of UC Merced’s main campus: (1) that the City of Merced complete an analysis of the disadvantaged communities and low-income households within its city limits and sphere of influence that lack safe drinking water and wastewater services prior to the annexation of UC Merced; (2) that the City of Merced commit to timely annexation of or extension of water and wastewater service to unserved or underserved disadvantaged communities and low-income households within its city limits and sphere of influence (whichever option the community prefers) prior to the annexation of the University; and (3) that the City of Merced offer annexation to disadvantaged communities and/or low-income households located near the campus or the option of receiving basic services through extraterritorial service agreements.

We appreciate the opportunity to engage on these issues, which are critical to ensuring equitable development and investment within the City and County of Merced, and we look forward to working with the Committee and the Author toward achieving these goals.

Sincerely,



Michael K. Claiborne
Leadership Counsel for Justice & Accountability

⁵ *Id.*

⁶ California Unincorporated: Mapping Disadvantaged Communities in the San Joaquin Valley, available at https://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf

⁷ SB 244 (2011), Section 1, available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB244