

From: [Greg Opinski](#)
To: [Espinosa, Kim](#); [McBride, Scott](#)
Cc: [REDACTED]; [Jason Vargas](#)
Subject: Opinions/suggestions for Pre-application meeting with city Council
Date: Monday, March 08, 2021 10:33:04 AM

Hello Scott and Kim

I wanted to respond to your request for input, regarding the preapplication discussions forthcoming with the Merced City Council.

I've cc'd Ken Lowney and Jason Vargas in this email as they are both involved in my development of our 48 acre parcel on Lake Rd. We've been working together since learning of the AB 3312 legislation.

Now that UC Merced is finally being annexed into the city, development on a commercial level will finally begin in earnest.

Reality is " UC Merced " is now the epicenter for development. Its taken a long time but Government leaders have finally realized that developers (and their end use tenants) want to invest their money with the greatest return.

And that is adjacent to UC Merced. Now there is going to be explosive growth adjacent to UC Merced. Which will rapidly fill in the gaps to the West and South of the Campus.

Your Topics for discussion have laid things out very well.

I think its pretty clear that the city expects any development (requesting to access Interim Sewer Capacity) should have the resources and master Plan that will best fit the needs of the City and the UC.

I agree 100%. There is a tremendous amount of land that is annexed into the City of Merced. However the majority of this property is ten years or more away from being developed. I believe a solution can be drafted that will allow the immediate development to take place utilizing excess sewer capacity. Therefore creating a stream of income/fees which will assist the ultimate goal of expanding the sewer system to accommodate the thousands of acres North and West of UC Merced. My point being, if the city holds excess capacity in reserve for the annexed property which is ten years down the road. Immediate development adjacent to UC Merced just won't occur.

Obviously developers who have annexed their property into the City, shouldn't be cut out of the Loop. However todays reality will show that Public Demand will want to develop and utilize the property between UC Merced and G st and/or Yosemite ave. via lake rd and Bellvue. I would hope the City recognizes this and captures this momentum.

I believe proximity to the existing sewer line is a factor as well, in determining access to Interim Capacity. I believe each applicant should be required to show the ability to tie-in to existing sewer along Bellvue (if that's their plan) as well as the ability to then switch over to a gravity fed system which is currently being reviewed for City approval.

UC Merced is of sufficient size and student population to create a large demand for off Campus high density residential, student housing, retail/commercial space for shopping, dining, entertainment etc....

I strongly agree with the City's idea that development be given priority based on their ability and desire to complete the entire development. Having development milestones included in the Development Agreements is a great idea.

Projects meeting the City's desired timelines should be given priority.

Thank you for allowing our comments to be considered for upcoming Staff and Council meetings.

Sincerely,

Greg Opinski

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March 8, 2021

Kim Espinosa, Planning Manager
City of Merced
678 18th Street
Merced, CA 95340

Thank you for the opportunity to comment on the draft recommendation for a pre-annexation agreement to be adopted by the City of Merced. I am commenting on this matter on behalf of the Virginia Smith Trust (VST). Pre-annexation and sewer allocation agreements are useful in increasing the certainty in the development process, and to allow the City to allocate scarce resources in a manner consistent with local development policies and community benefits associated with different projects. We support the City's pre-annexation review process, and respectfully request that the City staff and City Council incorporate the following clarifications and modifications into the City's proposed process and associated pre-annexation agreement template.

Our first comment relates to the staff report's identified "limitation" on sewer collection capacity. As noted in our comments submitted to the City of Merced on August 17, 2020, our comments on the Wastewater Collection System EIR (and at other times), the purported limitations are from sewer collection model runs that are based on flawed inputs and assumptions. The dry weather sewage generation rate currently stated in the model is from the 2007 plan, which significantly overstated capacity limitations even then. Since that time buildings in new developments must comply with newer building codes. As we demonstrated in our August 17, 2020 comment letter, the actual sewage generation is half of that assumed in the model. The assumption for wet weather peaking and inflow and infiltration (I/I) are also not representative of the rates generated by new development projects. The model also grossly overestimates the sewer flows from major point sources like UC Merced. Both VST and the City of Merced are conducting flow monitoring that will pinpoint and document the sewer flows from new development that will best inform these assumptions. We encourage the City to take a realistic look at the actual level of existing constraints, and the nature of shorter-term improvements that should be considered to substantially address the limitations before obligating new development projects to commit to improvements that substantially exceed the particular project's contribution to wastewater generation (such as the improvements recommended in our August 17th correspondence).

We support the concept that the allocation of sewer capacity should be based on some degree of "readiness", and should reflect a need to make conditional commitments to larger projects. In other words, sewer capacity should not be allocated to future projects that have not demonstrated "readiness" either because they have not yet obtained or still need to complete the necessary entitlements, or those projects which have significant regulatory hurdles or mitigations. For example, the 2008 USFWS Memorandum of Understanding for the Processing of Development Permits (2008

MOU) requires the issuance of a Biological Opinion prior to allocating sewage treatment plant capacity to any Development Project in Merced County. By contrast, UC Merced and VST are exempted from that requirement because they already have the necessary Biological Opinions, Incidental Take Permits, and the necessary mitigations in place due to the prior campus and University Community planning process. Thus, development projects should demonstrate how they have substantially complied with the 2008 MOU requirements prior to the City's commitment to allocate sewage treatment plant capacity to a particular project. At a minimum any development project that does not have such entitlements or permits should be required to identify applicable improvements and mitigation measures in their project descriptions and environmental documents in order to demonstrate that the City's allocation of capacity would not exceed available treatment plant capacity when considered with development projects that have already complied with the 2008 MOU. Given the community's shortage of housing, readiness is an important factor in reserving plant capacity for development projects ready to proceed.

While immediate readiness for housing production is an important factor, so is predictability in completing a project. Projects must often make significant infrastructure improvements and need assurance that they can complete their buildout to pay for the infrastructure. Standard No. 5 that requires applications (including building permits?) for at least 25 percent of a project in order to maintain their allocations is not practicable or advisable. This could also be construed as limiting City Council's ability to make longer term, phased commitments on larger development projects. This commitment could be date-based, or based on the developer's commencement of infrastructure improvements. These matters are normally a subject of negotiation for the Pre-Annexation Development Agreement or a Development Agreement; the standard as written appear to be focused on much smaller projects. To pre-determine the commitment before there is even environmental review fails to follow the City's own application review process.

In general, the standards appear somewhat confused and unrealistic. Specific comments are as follows:

1. Standard No. 1 should be part of the Conditional Wastewater Allocation Process itself. The annexation application should be part of the application for Conditional Wastewater Collection Capacity Allocation Agreement.
2. Standards 2 and 3 involve processing and constraints that are outside of the applicant's control and the application could technically be in breach of the agreement based on the lack of performance by others. This also does not recognize needed tolling times or challenge periods for CEQA documents.
3. Submittal of "improvement plans" within 90 days after LAFCo annexation approval is unrealistic and should not be a pre-condition to determining if an annexation application may proceed; this requirement ordinarily would be a condition of annexation; not a pre-

condition to processing an annexation request.

4. Standard 6 refers to the applicant making city requested changes “within 60 days of the permit filing”, without regard to the City’s actual plan check turnaround time for the particular development project application under review.
5. Standard 7 requires completion and issuance of a certificate of occupancy within 6 months of permit issuance. That is an unrealistically short timeline and conflicts with time frames set forth in the California Building Code. Initial “permit issuances” may be for major infrastructure improvements, and housing production may occur substantially later. We suggest that if associated infrastructure improvements have been started for a particular development phase, then sewer allocations should be locked in at that time or before, of course subject to any agreement reached in the pre-annexation/ development agreement.
6. Standard 8 requires that all units covered by the sewer allocation be completed in 3 ½ years. Longer term commitments are necessary for most projects and this standard ignores any commitments otherwise specified in the environmental review document, project approvals or Development Agreement.

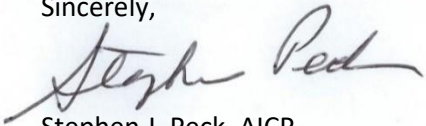
We understand that the City’s desire is to provide a “use it or lose it” framework for the permits. However, from VST’s perspective, a better approach would be to identify milestones or benchmarks that are broader and do not attempt to micro-manage the various steps in the process. Taking a realistic look at actual remaining sewer collection system capacity will help the city take a longer-term, measured approach, rather than a hasty, short-term approach in a manner commensurate with the specific development projects under review.

The annexation policies should reference other Urban Expansion policies, including the General Plan’s Short-Term and Long-Term annexation and development phasing (Page 2-18 of the Urban Expansion policies), Urban Expansion policy 1.4 relating to annexation and development of the University Community area, and development of some farmland areas to facilitate construction of regional infrastructure (such as Campus Parkway) and be consistent with Cortese-Knox-Hertzberg and the County’s own annexation policies

Finally, the benefits or standards should reference community benefits and standards more thoroughly and comprehensively. The Pre-Annexation agreement application materials should clearly state what items are of higher importance than others so that applicants can get a better idea of features to include. Community benefits could include environmental benefits such as reducing vehicle miles travelled (VMT) and associated greenhouse gas emissions; implementation water conservation and sewage generation strategies that limit the impact of the project; meeting an urgent development need (such as multifamily housing or other affordable housing).

Thank you for the opportunity to review this matter. We look forward to the presentation on March 15th. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Stephen Peck". The signature is written in a cursive style with a large, prominent "S" and "P".

Stephen J. Peck, AICP

President, Peck Planning and Development, LLC

Xc: Scott McBride, Development Services Director
Dr. Steve M. Tietjen, Ed D
Stephanie Dietz, Merced City Manager
Alecia Guerra, Esq. Buchalter Company