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TO: Local Agency Formation Commission

FROM: George J, Spiliotis, Executive Officer  
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**SUBJECT: SB 244 Implementation-Interim Policy for Disadvantaged  
Unincorporated Communities**

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PRIOR AGENDAS/RELATED ACTIONS: Legislative Update, 4/28/2011; Legislative Update & Potential Positions on SB 244, 5/26/2011; SB 244 Implementation Update, 1/26/2012.

BACKGROUND: As discussed in January, Senate Bill 244 imposed several new requirements and restrictions on LAFCOs, cities and counties. The requirements and restrictions are centered on disadvantaged unincorporated communities (DUCs). DUCs are defined as **inhabited** territory that constitutes all or a portion of a community with an annual median household income that is less than 80 percent of the statewide annual median household income (MHI).

Among the new provisions, the bill requires analysis of DUCs in conjunction with MSRs and SOI reviews and placed restrictions on the authority of the Commission to approve certain city annexations. As a general rule, a commission cannot approve a city annexation greater than 10 acres where there is a DUC contiguous to the area of the proposed annexation. The Commission is prohibited from approving such an annexation unless an application to annex the DUC has also been filed. However, there are two exemptions to the requirement to file an application to annex a contiguous DUC, as follows:

- 1) An application to annex the DUC has been filed in the past five years.
- 2) The commission finds, based upon **written evidence**, that a majority of the residents within the affected territory are opposed to annexations.

**Identifying DUCs:**

Staff indicated in January that we would develop draft criteria to guide identification of DUCs and return to the Commission for further policy direction. The following summarizes activities undertaken thus far, identifies issues/challenges in identifying DUCs and presents recommended interim criteria to assist in the identification of DUCs. LAFCOs across the state are wrestling with implementation of SB 244. Indeed, it will be addressed in one of the sessions at the CALAFCO staff workshop in April. It is likely that methods of identifying and analyzing DUCs will evolve, perhaps rapidly, over

time. Therefore, the Commission should consider the result of any policy action today to be interim guidelines, while further experience in implementing these provisions is attained.

We have initiated the process of identifying all potential DUCs within the County. As we discovered in our first data gathering experience (Annexation to Desert Hot Springs), assembling income data for specific geographic areas is not a straightforward task. Thus far, the smallest geographic units for which median household income is available are census block groups. Block groups are aggregations of blocks. Several block groups typically make up a census tract. Outside of heavily urbanized areas, block groups are rather large. They often include both incorporated and unincorporated territory and do not necessarily coincide with what might be thought of as community boundaries.

We are working with Orange County LAFCO staff to develop a "first cut" list of potential DUCs. They will overlay income data at the census block group level with shape files for incorporated jurisdictions. The product will be a listing and map of block groups in unincorporated areas that meet the specified income criteria. This initial inventory of block groups will require further honing based on suggested factors set out below.

In order to refine information gathered at the block group level, the following factors should be considered in the ultimate determination of DUC boundaries: inhabited territory, median household income and land use.

Inhabited territory: DUCs must include inhabited territory using the statutory definition of inhabited (12 or more registered voters) or as otherwise determined by commission policy. A low threshold, such as 12 registered voters, will have two distinct effects. First, by likely increasing the number of identifiable DUCs it will require a greater effort to make determinations required for Municipal Service Reviews and SOI updates. Second, it will likely increase the number of annexation proposals to which the aforementioned restriction will apply. Nevertheless, the Commission should be cautious about establishing a policy threshold that is excessive. The Legislature, by setting the default at 12 or more registered voters, clearly felt that the DUC provisions should apply to smaller enclaves that some might not consider full fledged "communities".

Staff suggests establishing a threshold of 50 dwellings or 50 registered voters, whichever is less. This threshold might be merely academic, in that it is unlikely that income data will exist for such small areas. Nevertheless, the default threshold of 12 registered voters, which could represent an area containing three or four homes, seems unreasonably low.

Income: Although a block group might be identified as having a median household income of less than 80 percent of the State MHI, various portions of the block group could have radically different MHIs. An effort should be made to differentiate between areas within a block group that are likely to have income above the specified criteria and exclude such areas from the DUC. Factors that could be considered include markedly different housing types or densities in portions of the block group. This determination could be made from aerial imagery.

Land use: The definition of a DUC focuses on inhabited (i.e. residential) areas meeting certain income criteria. It is recommended that vacant land, non-residential land and freeway/state highway rights of way on the periphery of such residential areas be excluded from DUCs. If such areas are clearly integrated in the core of a community, of course, they will be included within the DUC boundaries.

If the above approach is endorsed by the Commission, staff will proceed and return to the Commission at a future date with a listing and map of DUCs.

Additional implementation issue: In addition to the identification of DUCs, there is another element of SB 244 implementation that requires policy direction from the Commission. As noted above, the annexation restrictions imposed by SB 244 can be waived if written evidence is presented demonstrating that a majority of *residents* within the DUC oppose annexation. There is no statutory direction regarding what constitutes "written evidence" or even who qualifies as a resident (are minors included in the count?). (Note: The term *residents* is likely to be replaced with *registered voters* as part of the 2012 Assembly Local Government Omnibus Bill.) It is recommended that the Commission adopt the following policy until further statutory guidance is provided.

The Commission may make the finding regarding opposition to annexation of a DUC pursuant to Section 56375(a)(8)(B)(ii) based on either of the following:

- A petition stating opposition signed by a majority of the registered voters residing within the DUC. The validity of the petition shall be determined in the same manner as required by Section 56707.
- A scientific survey conducted by an academic institution or professional polling company. The polling results shall be accompanied by the specific question asked of respondents and the methodology employed.

It should be noted that in cases where a city is required to file an application for annexation of a DUC, the Commission still retains discretion over approval of that proposal. For example, there could

be cases where an identified DUC is a portion of a larger established community. The commission may determine that the DUC should not be placed within a different jurisdiction, but remain as a part of its larger unincorporated community.

**RECOMMENDATION:**

It is recommended that the Commission:

1. Direct staff to proceed with identification of disadvantaged unincorporated communities (DUCs) based on the approach outlined in this report.
2. Direct staff to report back in May regarding the status of DUC identification.
3. Adopt the policy regarding written evidence of opposition to annexation of a DUC as presented in this report.

Respectfully Submitted,

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Executive Officer