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SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

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September 7, 2007

Charles Rose, Chair
Peter Brundage, Executive Director
Sacramento LAFCO
1112 I Street, Suite 100
Sacramento, CA 95814

FAX: 874-2939

RE: Greenbriar, incomplete application

Dear Chairman Rose and Mr. Brundage,

This matter is set for hearing on September 19, 2007, regarding a proposed SOI, Municipal Services Review, and certification of the Environmental Impact Report. We very recently reviewed the Application for a Sphere of Influence (SOI) Amendment and Annexation dated November 2, 2005, by the City of Sacramento, titled "Annexation of Greenbriar Territory to the City of Sacramento." It appears that the Application is incomplete as follows:

The "Policies, Standards, and Procedures for LAFCo", as amended May 5, 1993 and presently in full force and effect, include "General Instructions for Applicants", which apply to all applicants. (Pp. IV-1 - VI-4). Instruction 3.i. (p. VI-4), states that:

"A Fair Political Practices Commission Party Disclosure Form will be required. ***Disclosures should be made for partners or other parties who hold a partial interest in the property.*** The LAFCo Commission Clerk will provide instructions regarding the completion of this form. The form is included in Appendix F." (Emphasis added.)

The Sacramento LAFCo Application Checklist, attached to the Policies, Standards, and Procedures for LAFCo as Appendix F, lists a "Fair Political Practices Commission Party Disclosure" form as a required submittal. The Disclosure form attached to LAFCo Policies as Appendix F states that:

"This form must be completed by applicants for, or **persons who are subject of**, any proceeding involving a license, permit, or entitlement of use pending before Sacramento County Local Agency Formation."

LAFCo's requirement that disclosures be made "for partners or other parties who hold a partial interest in the property," *supra*, is an essential mechanism to assure compliance with Government Code Section 84308, which restricts the receipt of campaign contributions by LAFCo Commissioners from any applicant, party, participant, or his/her agent, while a LAFCo

proceeding is pending in which the applicant, party, or participant has a financial interest. A "participant" is a person having a financial interest in a decision who lobbies or testifies, or "otherwise acts to influence officers of the agency," (Section 84308(a)(2), which includes authorizing an agent to lobby or testify. It is impossible for the public and LAFCo commissioners to assure compliance with Section 84308 if the identities of those having financial interests in the property are not disclosed. Those "financial interests" which trigger the restrictions of Section 84308 are described in Article 1 (commencing with Section 87100) Chapter 7 of the Government Code.

In her opinion letter dated July 11, 2007, regarding a different matter, LAFCo's legal counsel stated that Government Code Section 84308 generally does not apply to Sphere of Influence proceedings because they involve general planning and general policy decisions where the interests are many and diverse. However, the City's Application is for Sphere of Influence Amendment AND Annexation, the latter clearly being subject to Government Code Section 84308. On September 19, 2007, LAFCo will consider not only the proposed SOI, but will also consider certifying the project-specific Environmental Impact Report which will be relied upon for future land use planning and entitlements by City and LAFCo, adoption of a Mitigation Monitoring Plan which may include conditions and mitigation measures for future annexation and future land use entitlements by City, and Municipal Services Review. The project described in the EIR clearly is a single project for a specific ownership, with the SOI being only the first of the series of actions comprising the project and analyzed by the EIR. Hence, Government code Section 84308 is applicable to the LAFCo proceeding scheduled for September 19, 2007.

There is no authority for LAFCo to waive its own policies which requires submission, as part of the Application, of the disclosure documents for all persons having an interest in the subject property. LAFCo cannot assure compliance with its policies and the regulations of the FPPC if the required documents are not included in the Application. Action by LAFCo on an incomplete Application, especially an Application which is incomplete due to lack of FPPC disclosures, could generate public controversy about the impartiality of LAFCo's decisions, and potential exposure legal action.

We therefore urge that LAFCo direct Applicant to provide the disclosure information required to complete the Application, including the identities of all persons having partnership or other interest in the subject property or the LLC or LLP holding legal title, and to postpone the hearing until the next regularly scheduled LAFCo meeting so that the public, LAFCo Commissioners, and staff have sufficient time to review the disclosure filings to determine compliance with applicable FPPC regulations.

Thank you very much for your cooperation and courtesy.

Very Truly Yours,


James P. Pachl