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September 17, 2007

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Via Electronic Mail & Facsimile

Re: Application of Government Code Section 84308 to the September 19, 2007,
LAFCo Hearing

Dear Mr. Pachl:

This letter responds to your correspondence dated September 7, 2007, and September 13, 2007. After conducting research and obtaining oral advice from the Fair Political Practices Commission ("FPPC") regarding Government Code section 84308, we are confident that section 84308 does not apply to the Sphere of Influence Amendment hearing scheduled before the Sacramento Local Agency Formation Commission ("LAFCo") on Wednesday, September 19, 2007.

As Nancy Miller previously discussed with you, clear case law confirms that Government Code section 84308 does not apply to Sphere of Influence decisions by LAFCo. In order to trigger application of section 84308, LAFCo must be considering a "proceeding involving a license, permit, or other entitlement for use." Section 84308 defines a "license, permit, or other entitlement for use" as "all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises." (Gov. Code, § 84308, subd. (a)(5).)

The definition of a "license, permit, or other entitlement for use" was interpreted in *City of Agoura Hills v. Local Agency Formation Commission of Los Angeles* (1988) 198 Cal.App.3d 480. In *City of Agoura Hills*, the court held that a Sphere of Influence proceeding did not trigger section 84308 because, based on FPPC opinion letters, section 84308 "does not cover proceedings where general policy decisions or rules are made or where the interests affected are many and diverse." The court relied on the FPPC's conclusion that: "'Sphere of influence' plans are general planning documents adopted by LAFCOs which are intended to guide them in their

determination of specific proposals. It is our view that these types of general plans do not create any 'entitlement for use' within the meaning of section 84308. Thus 'sphere of influence' proceedings are not covered by this law." (*City of Agoura Hills v. Local Agency Formation Commission of Los Angeles* (1988) 198 Cal.App.3d 480, 497-498.) As a result of the plain language of section 84308 and *City of Agoura Hills*, it is beyond reasonable argument that section 84308 does not apply to Sphere of Influence decisions.

Your September 7, 2007, letter also argued that section 84308 applies to the September 19, 2007, hearing because the EIR being considered for certification includes a discussion of the environmental impacts of the annexation and other development entitlements. The FPCC confirmed orally that there is no authority that consideration of an EIR triggers section 84308. Consideration, and even approval, of an EIR does not confer any license, permit, or entitlement for other use, nor does it constitute approval of any project. Instead, the EIR simply allows decision makers to consider the environmental impacts of the project. (Pub. Res. Code, § 21100.)

An argument similar to yours was rejected in *City of Agoura Hills*. The Petitioner argued that because a sphere of influence is a pre-condition to annexation, it necessarily involves an "entitlement for use." The court found that this reasoning "does not compel a finding that the sphere proceedings involves 'an entitlement for use' subject to 84308, simply because annexations are viewed as proceedings subject to section 84308." (*City of Agoura Hills v. Local Agency Formation Commission of Los Angeles* (1988) 198 Cal.App.3d 480, 498.) Similarly, consideration of the EIR, as a pre-condition to annexation, does not involve an entitlement for use. Therefore, section 84308 does not apply to the consideration of the EIR at LAFCo's September 19, 2007, hearing.

In your letter dated September 13, 2007, you mentioned Ms. Miller's previous statement that section 84308 was applicable because all entitlement issues were being included in the SOI EIR. Ms. Miller's statement was made in a much different context than what faces the Commission today. Her letter was dated August 3, 2005, the same date on which LAFCo was considering whether to waive its policies and allow the City to have the Sphere of Influence Amendment and the Annexation heard at the same time. In that situation, section 84308 would have applied, since the Annexation would have triggered the "license, permit, or other entitlement for use" requirement. However, at the August 3, 2005, hearing, LAFCo denied the City's request and decided to hear the Sphere of Influence Amendment and the Annexation in two separate proceedings, in accordance with its policies. Therefore, Nancy's previous statement is no longer applicable, and was superseded by her memorandum to the Commission dated July 11, 2007, which was distributed to the Commissioners at LAFCo's August 15, 2007, meeting. A copy of that memorandum can be provided upon request.

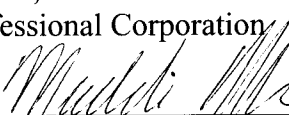
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Based upon the foregoing, section 84308 does not apply to the September 19, 2007, LAFCo hearing. If the Sphere of Influence Amendment is approved and if the City's Annexation application is considered by LAFCo in the future, section 84308 will apply at that time. If you have any questions, please feel free to contact me. Thank you.

Very truly yours,

MILLER, OWEN & TROST
A Professional Corporation

By: _____



Madeline E. Miller

MEM:edf

Cc: Peter Brundage
Don Lockhart
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