

Government Code 65589.7

The Intersection Between Water Service and Land Development

April 25, 2006

Introduction:

Housing in California is more expensive than any other state in the nation. The State Legislature has declared that California's lack of affordable housing leads to "discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration." (Gov. Code, § 65589.5.) As such, it has declared the housing crisis a matter of fundamental statewide importance.

Over the past few years, several laws were adopted that imposed obligations and restrictions on local officials in the arena of affordable housing. Amended Government Code section 65589.7, which became effective January 1, 2006, applies to all cities and counties, including charter cities. It provides that local water agencies and sewer districts must grant priority for service hook-ups to projects that help meet the community's fair housing need. Every city and county must distribute copies of its housing plan to all public and private water and sewer service providers to ensure these entities provide for the proposed developments in their current and future resource allocations.

Requirements:

Pursuant to this law, public agencies or private entities that provide water or sewer service must adopt by July 1, 2006 a set of written policies and procedures for providing priority service to affordable housing projects, and update those policies at least once every 5 years. The written policies must take into account the following:

- Regulations (under the Water Code) relating to water shortage emergencies
- Water supply availability as described in an urban water management plan
- Existing agency policies and plans that are used to make service determinations

In addition, a public or private provider of water or sewer services is not permitted to deny the approval of an application or reduce the services of a proposed development that includes lower income housing. However, a public agency or private entity may be exempt from this rule if

Pursuant to this law, public agencies or private entities that provide water or sewer service must adopt by July 1, 2006 a set of written policies and procedures for providing priority service to affordable housing projects, and update those policies at least once every 5 years.

they can show the following: (1) an insufficient water supply or insufficient water treatment or distribution capacity, (2) the supplier is subject to a compliance order issued by the State Department of Health Services that prohibits new water connections, or (3) the applicant has failed to agree to reasonable terms and conditions.

For more detailed information on this new statutory obligation and guidance in drafting written policies and procedures for providing priority service to affordable housing projects, please contact Amy Steinfeld, Hatch & Parent at (805) 882-1409 or ASteinfeld@HatchParent.com.