

### **HOUSING ACCOUNTABILITY ACT APPLIES TO MORE THAN JUST AFFORDABLE HOUSING DEVELOPMENTS**

*Honchariw v. County of Stanislaus*, No. F060788 (5th Dist. November 14, 2011)

**November 22, 2011 by Alex Merritt and Michael Wilmar**

Last week the 5th District Court of Appeal clarified that certain requirements of the Housing Accountability Act, Government Code Section 65589.5, are triggered by all housing developments, not just those that include affordable housing.

At issue in the case was Section 65589.5(j), which limits a local agency's ability to disapprove a proposed "housing development project" that complies with applicable general plan, zoning, and design review standards. To disapprove such a project, the local agency must first make written findings that the project would have a specific, adverse impact upon public health or safety, and that the impact could not be mitigated or avoided except by disapproving the project. Without making findings under Section 65589.5(j), the Stanislaus County Board of Supervisors rejected a proposal to subdivide 33 acres along the Stanislaus River and develop single family houses.

The developer petitioned for a writ of mandate to compel the County to make the required findings. The trial court ruled that the County did not need to make findings because the proposed development did not comply with an applicable design review standard—namely a County Code requirement that all lots of a subdivision must be connected to a public water system. The developer appealed.

On appeal, the County first argued that Section 65589.5(j) applies only to affordable housing projects. It reasoned that because other sections of the Housing Accountability Act specifically address affordable housing, the legislature must have intended to limit the applicability of Section 65589.5(j) to affordable housing projects.

The court rejected the County's argument. It first noted that the Act "expressly defines 'housing development project' to include residential units . . . , and nothing in that definition limits the reach of the phrase 'housing development project' to projects involving affordable housing."

Then applying standard principles of statutory construction, the court found that limiting Section 65589.5(j) to affordable housing projects would contradict the express definition in the Act. Moreover, the court found that even if the Act was ambiguous, nothing in the legislative history suggested that it was meant to be limited to affordable housing. Finally, the court pointed out that previous cases supported this interpretation, and that subsequent amendments to the Act did not compel a different result.

On appeal, the County renewed its argument that the public water connection requirement was a design review standard within the meaning of Section 65589.5(j), and that because the proposed development did not comply with the requirement, the County was relieved from the obligation to make written findings.

The court rejected the County's argument and reversed the trial court. The court doubted that the water connection requirement was a design review standard, but assuming it was, the court concluded that the developer had not failed to comply with it. The requirement stated that "all lots of a subdivision shall be connected to a public water system . . . whenever available." But because the County had not approved the developer's tentative map, there were no lots to connect to the water system at the time the County disapproved the development. Thus, the development had not failed to comply with requirement, and the County was obligated to make Section 65589.5(j) findings.