



## MEMORANDUM

DATE: April 16, 2002

TO: All Municipal Clients

FROM: W. Scott Snyder, Office of the City Attorney

RE: ESSB 6594, Secured Community Transition Facility (SCTF) Siting

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### SUMMARY

This Act amends the provisions enacted last year which established Secured Community Transition Facilities (SCTF) as essential public facilities and required GMA cities and counties to enact siting requirements. ESSB 6594 incorporates the recommendations of a joint select committee on the equitable distribution of SCTF's.

### DISCUSSION

The Act continues to require that cities and counties planning under the Growth Management Act must adopt processes to site essential public facilities, by September 1, 2002, and requires such counties and cities to provide development regulations that do not "preclude" the siting of SCTF's. ESSB 6594 partially preempts local regulatory authority to the extent that local regulations attempt to enact any more stringent conditions than those placed on the siting process by the State. Under other statutory requirements, counties and cities must establish a siting process for essential public facilities which may include the siting of SCTF's, regulatory authority over SCTF's is illusory in that SCTF's cannot be precluded and siting requirements must be limited to the conditions established by the State. Because the Act also preempts from regulation any local entity which has not adopted such development requirements by October 1, 2002, a clear policy choice is offered to zoning entities.

Cities which fail to enact development regulations governing SCTF's (and after October 1, are thus preempted) have a remedy not available to those which attempt to regulate siting. Preempted cities may propose public safety measures specific on a final site to the Department. The measures proposed must be consistent with the location of the facility at the final site. Proposals must be made in writing by the date of the second hearing when there are three sites, or the first hearing when there is only one site. The Act does not consider what might occur if

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two sites are under consideration. The Department then has fifteen days to respond. If the response is inadequate, the city or county then has fifteen business days to notify the Department of specific measures which it finds inadequate. Following notification, the city or county may petition the Governor to designate a person with law enforcement action to mediate the dispute. The determination of the mediator is final.

Thus, cities and counties which attempt to regulate SCTF's will find themselves limited by quasi-judicial principles and in a process in which they have little, if any, ability to effectively condition the siting application. On the other hand, if they allow themselves to be preempted, GMA cities and counties have access to a mediation process in which they can serve as an advocate for their citizens' interests.

### **RECOMMENDATION**

We suggest that cities and counties who are required to enact essential public facilities processes continue with that effort in order to deal with siting of a wide variety of public facilities many of which were similar to SCTF's but from which the cities and counties have not been preempted from action. For example, while group homes are essential public facilities, group homes which house persons who are a threat to persons or property are not entitled to the protection of State and Federal statutes, such as the Fair Housing Act Amendments. We also recommend that city and county governments closely consider whether the specific siting of SCTF's is better left to the State where the city or county can act as an advocate for its citizens' interests rather than electing to follow an illusory regulatory process. As the Planning Director of one of our client cities observed, "If you thought adult entertainment aroused negative public interest, wait until you hold a hearing to permit an SCTF."

### **ADDITIONAL PROVISIONS OF INTEREST**

The Act also establishes an immunity for law enforcement officers acting reasonably in good faith to calls regarding residents of SCTF's, as well as an immunity for counties and cities acting in good faith to provide for the siting of SCTF's.

The Act also contains additional clarification and restrictions regarding siting and operational issues such as response time, monitoring and escorting of the residents of SCTF's.