

August 7, 2008

CALIFORNIA ADOPTS NEW GREEN BUILDING CODE IMPACTING DEVELOPERS, LENDERS AND TENANTS

On July 17, 2008, California adopted a new California Green Building Standards Code that will change future construction standards and costs, and affect all new construction. The code, adopted by the [California Building Standards Commission](#), is the first of its kind on a national level and has been marketed as setting an international precedent for resource preservation and combating global warming.

The California [Green Building Standards Code](#) will affect planning and design of new construction projects; energy efficiency of new construction projects; water efficiency and conservation; material conservation and resource efficiency; and environmental air quality. The goal of the new standards is to reduce energy use by at least 15 percent. They will also reduce the use of toxic substances in new construction projects. These new standards will further California's goals of reducing greenhouse gases, by 2020, to a level that will be 20 percent below those measured in 2005. Another beneficial result of the new standards is a 50 percent reduction in waste streams from construction sites.

Beyond water and energy efficiency, compliance with the code will require developers to meet new standards regarding the use of eco-friendly flooring, carpeting, ceiling panels and insulation, among other things. The code also sets new standards for dual plumbing systems, for potable and recyclable water, and for the diversion of construction waste to landfills. While initial construction costs may be higher, supporters of the new code argue that the long-term operation and use of buildings meeting this new standard will result in cost savings. This will require additional due diligence on the part of investors and lenders regarding understanding cost-benefit analysis and predicting returns on investments.

Developers are already lobbying to receive greenhouse gas emission reduction credits for their investment in buildings with lower carbon footprints. How such emission reductions will be calculated and how

associated emission reduction credits may be allocated, if at all, may dramatically impact the cost benefit analyses of all parties associated with the construction, lending, and long-term use of affected properties.

Compliance with the new building code is currently voluntary, but will become mandatory in 2010. To encourage developers to follow the new green standards during this period of voluntary compliance, California is looking at potential incentive programs, including tax breaks.

Some of the federal income tax incentives for installing energy-efficient improvements in buildings expired at the end of 2007, and many more will expire after 2008 if Congress does not act to extend them. Although the House passed a bill this spring that would have extended these tax breaks for as long as five years, the Senate failed to vote on any "tax extender" bill before it recessed July 31. Senate Majority Leader Harry Reid has pledged that the Senate will work to pass an energy and "tax extenders" bill in September. We will continue to follow this issue and keep you updated.

From assistance with basic licensing and registration requirements, to contract negotiations and mechanics' lien matters, to resolution of disputes in virtually any forum, Reed Smith represents clients in all aspects of the construction process.

For additional information, contact any of the attorneys listed below, or the Reed Smith attorney with whom you regularly work.

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