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## Legal Updates & News

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#### Green Buildings: Coming to a Location Near You!

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California has again taken the lead in developing regulations to reduce our carbon footprint, this time taking aim at buildings, the source of over one third of the State's greenhouse gas emissions. On July 17, 2008, the California Building Standards Commission, the state agency that oversees the adoption and implementation of the State's building codes, adopted the California Green Building Standards Code ("Green Building Code"), the first statewide green building regulation of its kind.

Although the Green Building Code will only be voluntary when it initially takes effect, its statewide application is significant. So far, green building ordinances have been adopted in local jurisdictions around the nation, mostly based on the popular LEED certification standard, but until now no state has directly confronted the issue for private development. Further, the voluntary nature of the regulations is likely to be short-lived – at least some elements of the Green Building Code are expected to become mandatory by the end of 2010.

In the U.S., buildings account for 40% of total energy use, 36% of greenhouse gas emissions, 30% of raw materials use, and 12% of potable water consumption. Implementation of the Green Building Code will likely reduce these numbers, which will in turn facilitate the State's efforts under AB 32 to reduce greenhouse gas emissions to 1990 levels by 2020. Indeed, the Code aims to cut energy use in buildings by 15% to 30%, reduce potable water use by 20% and water for landscaping by 50%.

The purpose of the Green Building Code is to enhance "the design and construction of buildings through the use of building concepts having a positive environmental impact and encouraging sustainable construction practices." It focuses on improving five key areas of building design and construction: (1) planning and design, (2) energy efficiency, (3) water efficiency and conservation, (4) material conservation and resource efficiency, and (5) environmental air quality.

Development of the Green Building Code got its kick-start last October when Governor Schwarzenegger vetoed green building Assembly Bill 1058. In a memo explaining the veto, the Governor stated that he supported green construction standards, but thought that they should be developed by the Building Standards Commission, not the Legislature. As a result, the Commission accelerated its ongoing work on green building standards, resulting in the new Green Building Code.

Reaching the adopted standards was not without its struggle. The Commission sought to balance the views of various stakeholders on such issues as whether the Code should be mandatory, the flexibility permitted to developers to choose how to comply, whether local jurisdictions could adopt stricter standards, and whether LEED standards should be incorporated into the Code. In the final regulations, LEED is not mentioned, and the scope of what will be mandatory has been delayed to a later date. Local jurisdictions, however, are free to adopt more stringent – and mandatory – green building requirements. Indeed, a number of California cities already have or are considering more stringent standards.

Anyone looking to develop in California needs to be familiar with these new standards, particularly if

the project will occur after 2010 as the green building standards will likely be mandatory by then. In the meantime, the California Building Standards Commission will continue to refine the Code and address the difficult questions of which elements, if any, will be mandatory and the flexibility afforded developers in complying with the Green Building Code. If you are interested in learning more about green building regulation, or in becoming involved in this regulatory drafting process, contact one of our attorneys with expertise in the field of green building regulation: Mitch Randall (

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