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REAL ESTATE & LAND USE

NEWSLETTER OF THE REAL ESTATE AND LAND USE PRACTICE OF MANATT, PHELPS & PHILLIPS, LLP

Green Building Standards Rule the (Earth) Day in Los Angeles

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In a fitting ceremony for Earth Day, the Los Angeles City Council unanimously adopted a Green Building Program on April 22, joining a growing number of cities that will require large private development projects to meet minimum standards of sustainability. As the state struggles to implement AB 32 and ratchet back greenhouse gas emissions, cities throughout California, large and small, are feeling the pressure to impose mandatory green building and conservation standards. The City of Beverly Hills is also going green with its own ordinance that will be considered by its City Council later this month.

With few exceptions, the City of Los Angeles Green Building Program requires the following categories of large development projects to demonstrate compliance with the Leadership in Energy and Environmental Design (LEED) "Certified" Level or higher:

- New nonresidential buildings at or above 50,000 gross square feet of floor area,
- New high-rise (above six stories) mixed use or residential buildings at or above 50,000 gross square feet of floor area,
- New low-rise (six stories or less) mixed use or residential buildings of 50 or more dwelling units within buildings of at least 50,000 gross square feet of floor area, and
- The alteration or rehabilitation of at least 50,000 gross square feet of floor area or at least 50 dwelling units in existing buildings where construction costs exceed a valuation of 50% of the building's replacement cost.

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LEED is a rating system promoted by the U.S. Green Building Council (USGBC) as a scorecard for the design, construction and operation of high-performance green buildings. The LEED Rating System includes four escalating levels of certification: Certified, Silver, Gold and Platinum. Qualification for each level is based on a tally of points depending upon the type of construction and use.

The LEED point system is designed to provide the flexibility to achieve certification through a combination of options. For example, depending on the category of development, points are awarded for site selection, alternative transportation, stormwater design, water and energy efficiency and enhanced recycling efforts, among others. The "new construction" category awards points for increased density or community connectivity, reusing existing structures, brownfield redevelopment and use of rapidly renewable materials. Developers can obtain points for water-efficient landscaping, applying low-emitting materials, and installing high-efficiency HVAC and other appliances. Some minimum standards, such as the storage and collection of recyclables, are mandatory prerequisites for LEED certification.

Opportunities to accumulate points vary for each type of construction. LEED Rating Systems cover New Construction (NC), Existing Buildings (EB), Commercial Interiors (CI), Core and Shell (CS) and Homes (H). Project applicants may select the LEED Rating System best suited for their project. As some projects may qualify for more than one type, we recommend that applicants review the different systems to determine the best advantage. For more information on the points and rating systems, you can visit the USGBC at www.usgbc.org.

Although formal certification by the USGBC is not required for the Los Angeles Green Building Program, the project team must include a LEED Accredited Professional who will submit a signed declaration that the project meets the intent of the Certified Level. Plan check documents submitted to the City must also include a LEED checklist with a tally of points under the USGBC system. Ultimately, the City's Planning Department will make the determination on whether the project meets the intent of the LEED criteria.

Los Angeles also provides an incentive for greater environmental efficiency above the USGBC's minimum standard. Projects that voluntarily commit to LEED Certification at the Silver Level or higher will meet the City's Standard of Sustainable Excellence and will qualify for expedited processing by the Planning Department.

The proposal for green building requirements that will go to the Beverly Hills City Council later this month is more stringent than that adopted by the City of Los Angeles. Indeed, in a few respects it even goes beyond the USGBC requirements. While the Beverly Hills Ordinance is also based on LEED points, the City will require that buildings from 10,000 to 24,999 square feet *must* meet the LEED "Certified" Level, and buildings that are 25,000 square feet or more *must* meet the LEED "Silver" Level. In addition, under the current proposal all buildings *must* exceed the Title 24 energy efficiency standards by at least 15% and *must* include photovoltaic solar panels for a 7.5% energy savings.

LEED certification is becoming a benchmark in major cities across the nation. Washington, D.C., recently enacted the Green Building Act of 2006, which will phase in green building standards over several years, beginning with public buildings, followed by publicly financed buildings, and ending with private construction. By 2012 all new and renovated buildings larger than 50,000 square feet - public and private - must conform to green standards based on LEED criteria. The City of Boston similarly approved several amendments to its zoning code to require all private and public construction projects over 50,000 square feet to be designed and planned to meet minimum standards for LEED certification. New York City's green building law, Local Law 86, went into effect on January 1, 2007, and requires most city-owned and city-funded buildings to achieve LEED Silver certification.

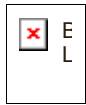
Home builders and even industrial developers are beginning to embrace green building techniques in California, not only to address environmental concerns, but because buyers and tenants are becoming more sophisticated about long-term utility costs. Much of the added cost for sustainable products can be recouped over time through lower energy and water bills, and some buyers are willing to pay a premium for the added efficiency and the green branding. A growing segment of the market is now actively looking for environmentally friendly products, and as the availability of green materials and technology increases, more and more builders are finding it cost-effective to include these components. According to a recent survey, 73% of home buyers looking for a mid-sized home would be willing to pay up to \$50 more per month to have green products in their home.

Many developers have supported local ordinances requiring minimum standards of sustainability because they provide an additional tool to help mitigate cumulative environmental impacts, particularly as greenhouse gases become an important focus in environmental litigation. Moreover, a

citywide ordinance will create a level playing field so that some of these costs are shared by all development projects. We recommend that developers consider sustainability concepts at the earliest stages of the planning process because many LEED points can be accumulated for site location, innovative design, and even demolition and construction procedures. It is more difficult to seek LEED points once the project is designed.

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He advises clients regarding entitlement strategy and the processing of land use permits, securing approvals for zoning and general plan amendments, and managing environmental concerns and other project impacts. Mr. LeRoy regularly works with real estate investors and pension trusts to evaluate the risks of development opportunities prior to acquisition. He specializes in the application of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), including the review and processing of environmental assessments, environmental impact reports, and negative declarations. He has a broad range of land use experience, including the development of residential, commercial, and industrial projects at the local level and the permitting of regional energy projects involving multiple state and federal agencies.

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