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ASK AN ATTORNEY

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***Q** Are new greenhouse gas emission standards likely to affect commercial real estate development projects in this region?*

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A Few issues in the environmental context have received as much attention during the last few years as global warming and greenhouse gas emission control. Most people acknowledge that the clear weight of scientific evidence supports the conclusion that anthropogenic activities are contributing to a gradual increase in average atmospheric temperatures. At the same time, debate continues, at least at the national level, about the severity of impacts resulting from these temperature/climate variations and the best ways to address them.

In the absence of federal greenhouse gas emission controls, numerous states, notably including New Jersey and Pennsylvania, are proceeding with state-specific regulatory programs. These programs may have implications for commercial real estate development on several fronts.

First, both state and private entities have created financial incentives supportive of building construction and operational techniques that minimize environmental impact, including with respect to carbon/greenhouse gas emissions. Commercial real estate developers can take advantage of some of these financial incentives by including certain "environmental-friendly" components into building design. Depending upon the extent of environmental-beneficial components, "green buildings" may provide significant opportunities for financial incentives for commercial real estate developers. In addition to affirmative financial grants or loans, many prospective purchasers or tenants are requesting environmental-friendly space, either because of environmentalist perspectives or the potential public relation benefits that may be secured from association with "green" buildings.

Of course, state-specific greenhouse gas programs include the more traditional "command-and-control" programs, as well. As in many areas, California has been at the forefront of imposing regulatory requirements designed to limit greenhouse gas emissions. Using an innovative approach toward carbon emission control, certain California municipalities are requiring developers of industrial projects to identify and offset the greenhouse gas emissions potentially associated with their proposed projects. In many instances, rather than attempting to pursue legal challenges to these requirements, industrial developers comply with these mandates, incurring significant costs to minimize carbon-related emissions, and/or additional costs to achieve or secure additional emission reductions to offset the total quantity of greenhouse gas emissions associated with the project.

Although these efforts have principally been directed to developers of industrial projects, numerous state and local agencies have discussed the potential for extending the same approach to all development projects that require state or local authorizations or approvals. In any event, state and local authorities, at least in New Jersey and Pennsylvania, are increasingly evaluating opportunities for imposing requirements on greenhouse gas emissions in the context of reviewing applications for regulatory approval.

Finally, the current focus on global warming and greenhouse gas emissions is already having an impact on both the cost of electricity generation and the probable mix of energy alternatives. New Jersey is a participant in the Regional Greenhouse Gas Initiative ("RGGI"), pursuant to which electric utilities are required to initially identify, and subsequently hold authorization for, greenhouse gas-related emissions. The costs of compliance with this program will likely translate into increased costs of energy generation. Further, in accordance with state initiatives, notably including Pennsylvania's focus on renewable energy, electric utilities are increasingly utilizing alternative sources of energy generation.

State, county, and local authorities have determined to secure all or a portion of their own energy needs from alternative sources, and will likely begin to impose requirements, as a condition of authorization of development projects, that the developers of such projects derive energy from alternative programs, to varying extents. Commercial real estate developers may therefore want to consider incorporation of alternative energy sources into project design.

In summary, the local impact of greenhouse gas regulation is only beginning to emerge, and only in specific jurisdictions. However, it is clear that local and state governments will increase their attention to this area. Developers may benefit from anticipating and planning for this expected focus, and may secure financial benefits by incorporating these considerations into current projects.

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