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REAL ESTATE DEVELOPMENT NEWS

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The world of real estate development has never been one for the faint hearted and recent legal trends and court rulings make it clear that developers have ever increasingly more hurdles to clear before new projects can be started. Some of these obstacles are highlighted below.

Developers See Green

It was not long ago that the term "green" conjured up images of activists trying to stop seal hunting in the Arctic or referred to strictly a European phenomenon. This is no longer the case as more and more states, counties and municipalities are requiring new buildings and homes to be more energy efficient and to meet conservation standards. Not only are governments creating additional regulatory requirements for developers, but consumers are also requiring environmental and ecological amenities be built into their homes and offices.

For more than ten years, the LEED Green Building Rating System has been the standard for green construction. This system utilizing different levels of certification is administered by the U.S. Green Building Council a non-profit organization having as it stated purpose "to transform the building marketplace to sustainability." To obtain LEED certification, points are accumulated in five different categories:

- Sustainable site development
- Water savings
- Energy efficiency
- Materials selection
- Indoor environmental quality

Depending on the number of points that are accrued, a project can be certified as Platinum, Gold, Silver or Certified.

While in the past, a developer was able to choose whether or not to build a LEED certified project, many California governmental agencies are now adopting these standards as law. For example, in the state of California, all state funded buildings must achieve at least a LEED Silver Certification. In Los Angeles, all new government buildings in excess of 7,500 feet must receive a LEED level certification and in San Francisco, all new municipal construction projects in excess of 5,000

square feet must meet one of the LEED standards. In the private arena, municipalities are also requiring that certain green standards be met.

It is not just governments and quasi governmental agencies that are encouraging "green" building and private institutions are also attempting to be more socially responsible. Recently, for example, the Bank of America announced that it was committing over \$1.25 billion to achieve LEED certification in all of its banking centers and new construction.

Because the implementation of LEED standards is becoming more prevalent, it is in the best interest of developers and real estate professionals to understand that these once voluntary "green" guideposts are fast becoming the norm.

Future Water Sources

The California Supreme Court in the case of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (Vineyard)* announced new standards for addressing how the future water supply for a proposed project is to be analyzed under the California Environmental Quality Act. While not clearly articulating a standard for review, the Court did address the issue of how definitively water supplies for a proposed project must be identified and assured in the related environmental impact report (EIR). Simply put, the source for all of the water needed for all of the phases of a multi-phase development must be identified and the likelihood of the water being available when the last units are built must be addressed in the initial EIR. A mere statement that the water will be available when the later phases are to be constructed is not sufficient to meet the new review standards. If the source of water cannot be adequately addressed for future phases, then the EIR must reflect possible sources for the water and the impact to the environment of accessing these additional water sources. Because of ambiguity in the Court's opinion, it is assured that this topic will be litigated again.

Architectural Copyright Landmines

A fact little known by developers is that architects have protection for their work under the Copyright laws. Copyright laws govern who owns plans that are created for the construction of a project as well as the things that can be done with those plans. As a practical matter, this means

- Care must be taken in the negotiating and drafting of contracts and engagement letters with architects to insure that the resulting plans can be used for their intended purposes without running afoul of Copyright laws.
- A written agreement between the developer and the architect should clearly state whether it is the developer or the architect who owns the finished work, including any improvement changes made by the developer.
- Before executing an engagement letter or contract with an architect, the developer should determine whether he desires to use the plans for other structures he intends to build. If so, this must be specifically addressed as part of the terms of engagement.