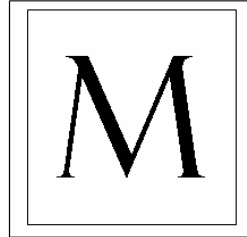


# “BUSINESS LAWYERS SERVING BUSINESS”



**MCCARREY  
LAW  
GROUP**

**April 2007**

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## **WELCOME**

Dear Friends,

We appreciate all of the positive response that we have received to the first edition of our monthly newsletter, "Business Lawyers Serving Business." We hope that you will continue to find this bulletin helpful and informative.

The mission of the McCarrey Law Group is to provide sound legal advice tempered by the realities of the business world. Our lawyers operate in the real world and understand the challenges that business faces. The purpose of "Business Lawyers Serving Business" is to highlight both issues and solutions to problems facing you and the rest of our diverse group of clients.

The McCarrey Law Group is a boutique firm that provides legal services to real estate professionals, financial institutions, entrepreneurs and businesses operating among the NAFTA countries. We are worldwide in our view, but never forget that our business is our clients. We desire to provide you with the best legal service possible and hope that you will find "Business Lawyers Serving Business" helpful and informative.

If there are issues that you would like to see addressed in our Newsletter, please contact us. We prize our relationship with you and look forward to continuing our association.

## **THE MCCARREY LAW GROUP**

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### **REAL ESTATE DEVELOPMENT NEWS**

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 its 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.

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#### *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.

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#### *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.

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### **FORMING A MAQUILADORA MADE SIMPLE**

Maquiladoras are special tax advantaged entities which were created pursuant to Mexican law to facilitate the development of a strong export economy. Maquiladoras are able to import raw or unfinished goods for the purpose of processing, manufacturing or assembly and when products are shipped from Mexico for final

assembly, packaging or distribution in destination markets, Mexico levies duties only on the non-NAFTA value added in Mexico.

The term “maquiladora” is derived from the Spanish word referring to the amount of milled corn that a miller would be paid by a farmer for grinding the farmer’s oats into meal. The number of maquiladoras has undergone considerable growth during the past couple of years in contrast to the previous five years where many maquiladoras and related jobs moved to China or in some instances India due to cheaper labor costs. There are now more than 2,800 maquiladora factories in Mexico and it appears that the loss of jobs and businesses to Asia has been stemmed.

Maquiladoras were originally created as a way of providing jobs to Mexican citizens, while at the same time providing transnational companies with access to a stable work market having lower labor costs as well as proximity to the United States. Initially, maquiladoras were located almost exclusively along Mexico’s northern border, but can now be found throughout the entire Republic. About one-third of Mexico’s foreign investment, or about \$20 billion annually, flows through this industry and more than one million people are employed by the maquiladoras. More than 50,000 new jobs are created each year by this sector and the entire industry is valued in excess of \$121 billion. By far, more maquiladoras are located in Tijuana than any other location in Mexico.

While previously, the textile industry accounted for a substantial portion of the maquiladoras, new industries are now taking advantage of the many benefits of manufacturing in Mexico using this unique structure. For example, five years ago there were no aeronautical maquiladora plants while today, there are 110 such companies exporting more than \$0.5 billion a year.

Maquiladoras may be 100% owned by either foreigners or Mexicans or may be owned by joint venture partners that are both foreign nationals as well as Mexicans. Late in 2006, new rules were implemented to consolidate and simplify governmental reporting and compliance for the industry. If you are considering creating a maquiladora to take advantage of the many benefits this form of business brings or if you have questions about how a maquiladora might benefit you, please contact us.

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## **DR CAFTA CREATES TRADING OPPORTUNITY IN CENTRAL AMERICA**

Last month, Dominican Republic became the fifth of the six member nations to ratify the U.S.—Dominican Republic—Central America Free Trade Agreement (DR-CAFTA). The six countries that are party to DR-CAFTA are the U.S., the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Costa Rica with only Costa Rica not yet having ratified this treaty. The effect of DR-CAFTA has been to eliminate immediately 80% of the tariffs on U.S. goods exported to the region and a gradual phasing out of the remaining duties over a ten year period. The effect of this is to give U.S. business greater access to over 44 million Central American consumers.

While the Dominican Republic and Central America markets are relatively unknown to most, more than \$15.5 billion is exported annually to this region by the U.S. This amount is more than the combined total of U.S. products sold to India, Indonesia and Russia. One study reported that DR-CAFTA will create more than 130,000 new jobs in the United States over the next ten years.

DR-CAFTA goes along way in leveling the playing field between the U.S. and the region covered by the treaty. Before DR-CAFTA, more than 80% of the goods from these countries entered the U.S. without significant duty while goods going the other direction were subject to duties in excess of 80%. This imbalance will effectively be eliminated by the treaty. It is projected that new markets worth in excess of \$1.5 billion will be opened for U.S. farmers alone during the next ten years.

Of the five non-U.S. countries to the treaty, the Dominican Republic is the largest with exports totaling \$5.3 billion in 2006. The U.S. has a \$1 billion trade surplus with the region of which \$819 million was represented by the Dominican Republic.

As you look to expand into these markets, please contact us and let us help you access these robust and growing markets.

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