

MAY 2008**Group Contact:**

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About the Climate Change and Sustainable Development Group

Wiggin and Dana has established its Climate Change and Sustainable Development Group to recognize this firm's capability to address the rapidly growing needs of current and potential clients with regard to (i) the imposition of mandatory, or adoption of voluntary, environmentally-desirable business practices, (ii) the business opportunities associated with climate change and sustainable development, and (iii) litigation arising in connection with these trends.

Read More...**The Rising Profile of "Green Building" Standards in Affordable Housing Programs**

Government agencies that provide financial and other types of incentives and assistance to affordable housing developers are increasingly incorporating "green building" standards, often developed by the private sector, into their programs and regulations. These standards generally incorporate specific construction, rehabilitation, and outfitting methods and/or materials intended to reduce a building's energy use and environmental impact.

Federal Developments

On January 17, 2008, the U.S. House of Representatives passed the HOPE VI Improvement and Reauthorization Act of 2007 and the Senate, in turn, has referred this bill to its Committee on Banking, Housing and Urban Affairs. Since 1992, the HOPE VI program, which the U.S. Department of Housing and Urban Development (HUD) administers, has funded the demolition and redevelopment of aging, distressed public housing projects across the country. The bill, if signed into law, would require that residential construction receiving HOPE VI funding meets the Green Communities Criteria, energy efficiency and health standards specifically applicable to affordable housing projects. The non-profit Enterprise Foundation, in partnership with the U.S. Green Building Council (which developed the Leadership in Energy and Environmental Design (LEED) rating system and administers the LEED certification program), developed these housing-specific criteria. This bill also would exempt expenditures in meeting these criteria from HOPE VI cost limitations for redevelopment projects.

On the agency side, HUD's Office of Affordable Housing Preservation (OAHP) introduced the pilot Mark-to-Market (M2M) Green Initiative in July 2007 and released a corresponding "Green Guide" description of the initiative in November 2007. OAHP administers the M2M program, which finances property rehabilitation and debt restructuring to encourage projects that might otherwise opt out of subsidized housing programs to maintain affordability levels. The Green Initiative substantially subsidizes energy conservation measures that developers in the M2M program voluntarily undertake.

Under the Green Initiative, the OAHP audits rehabilitation projects and evaluates the feasibility of incorporating new "green" methodologies and technologies. Based on this analysis, OAHP makes specific recommendations for improving the project's energy efficiency and minimizing its overall environmental impact. Property owners that accept more than 75% of these recommendations, measured in terms of cost, receive a subsidy such that these owners may pay as little as 3% of the cost to implement the OAHP recommendations. Property owners that accept 50%-75% of the recommended improvements receive a subsidy enabling them to pay as little as 10% of the costs of the recommended improvements. In either case, the property owners receive additional property management fees from OAHP over the term of the restructured financing arrangement. New M2M projects and projects currently in the M2M pipeline that have not yet executed an OAHP Restructuring Commitment are automatically eligible to participate in the Green Initiative program. Existing M2M projects may apply to participate.

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Connecticut and New York Programs

New York and Connecticut are increasingly incorporating new energy efficiency standards into their Qualified Allocation Plans which set out the allocation process and selection criteria for federal Low-Income Housing Tax Credits. These credits are federal subsidies, administered by the states, to spur the development of affordable rental housing.

New York revised its federal tax credit criteria in 2008 to include “green building” considerations. Beginning in the 2008 application cycle, New York’s Qualified Allocation Plan uses the Enterprise Foundation’s Green Communities Criteria as a benchmark to assess applications. For example, New York now requires applicant projects to include Energy Star appliances, efficient heating systems and lighting fixtures, and water and energy efficiency measures. The criteria also create incentives for these affordable housing projects to minimize environmental impacts and to construct projects on remediated brownfield sites.

In its revised Standards of Design and Construction mandated in Connecticut’s Qualified Allocation Plan, the Connecticut Housing Finance Authority (CHFA) requires applicants for Low-Income Housing Tax Credits to incorporate Energy Star-rated appliances in their project designs and to consider using alternative energy sources, such as solar panels and energy-efficient heating systems. In addition, in reviewing applications for tax credits, CHFA rewards projects that minimize the need for residents to drive by incorporating pedestrian-friendly measures and locating near transit nodes and amenities, such as grocery stores, public parks and community recreation centers. CHFA also rewards energy conservation features, such as high-efficiency toilets, Energy Star-rated ceiling fans, and rainwater retention and treatment facilities.

Conclusion

Although the federal government has not yet required adherence to “green building” standards, the pending HOPE VI Improvement and Reauthorization Act of 2007, would impose such a requirement for certain public housing. While this type of requirement would ripple broadly across the entire affordable housing sector, the bill’s chances for passage in the Senate—and for the President’s signature—remain uncertain. Shying away from mandatory programs, the U.S. Department of Housing and Urban Development (HUD), in its M2M pilot program, provides subsidies to incentivize voluntary implementation of “green” standards in rehabilitating and maintaining privately-owned affordable housing.

Taking a different tack, New York in 2008 required state agencies that grant federal Low-Income Housing Tax Credits for affordable rental housing projects to mandate certain energy efficiency standards and to reward other energy efficiency measures in selecting applicants for federal tax credits. This change may compel developers to consider energy efficiency measures in assessing the feasibility of projects and their potential rate of return. Connecticut also requires low-income housing tax credit recipients to incorporate certain energy efficiency measures in their projects. As more developers design with these “green” features, proposed affordable housing projects in New York and Connecticut could effec-

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tively require these add-ons to ensure competitiveness in the tax credit application process. This dynamic could potentially change the cost of doing business in the affordable housing sector in New York and Connecticut.

These incentives and requirements will create both challenges and opportunities for the affordable housing industry. “Green” building requires specialized expertise in construction, energy usage, and engineering. Financing “green” projects requires an understanding of the various incentive programs and the regulatory framework. There are long-term benefits to be garnered, however, in the form of long-term cost savings and public incentives. For inquiries regarding these programs or other issues related to affordable housing and climate change, please contact the Climate Change and Sustainable Development practice group at Wiggin and Dana, LLP.

The Wiggin and Dana Sustainable Developments e-Newsletter is a periodic newsletter designed to inform clients and others about recent developments in the field of climate change and sustainable developments law. Nothing in the e-Newsletter constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues. In certain jurisdictions this may constitute attorney advertising.