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Sustainability and Climate Change

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Industry Study Fails to Consider Impact of Government Incentives on Green Building Cost-Benefit Analysis

Buildings in the United States are estimated to be responsible for approximately 38 percent of the nation's carbon dioxide emissions. In the not-too-distant future, green buildings or retrofits may be regulated under anticipated new federal laws and international treaties mandating a reduction in greenhouse gas emissions. The recent stimulus package provides billions of dollars for green construction of government buildings. But in today's pre-mandate economy, green building in the private sector hinges on whether the added construction cost can be justified by cost savings over the useful life of the building, and the true cost of building green is the subject of some controversy.

In March 2009, NAIOP, the Commercial Real Estate Development Association, issued a modeling study which concluded that 30 percent and 50 percent improvements in energy efficiency above building code requirements were not financially feasible for most new Class A office construction. The U.S. Green Building Council and various architects and engineers have criticized the NAIOP study on a number of grounds. One seemingly valid criticism is the study's failure to consider any of the federal, state or local financial incentives for energy efficiency, in spite of the obvious impact of such incentives on green building cost-benefit analyses. As a result, the NAIOP study appears to unnecessarily discourage green building because it does not consider the many financial incentives that are available to reduce costs.

Navigating the Maze of Programs and Incentive Types

The types of green building incentives for which a project may be eligible are determined by a number of factors, such as the project's nature and location, and whether it is certified by green building standards organizations. Depending on the circumstances, the project qualifying for the incentive may be a new building, or an energy-efficient feature of a new or existing building.

In general, federal incentives fall into one of two broad categories—energy efficiency incentives and renewable energy incentives. An example of the first type of incentive is the energy efficient commercial building tax deduction. Tax credits for alternative energy installations, such as solar panels or green roofs, would fall into the second category. The latest stimulus package addressed the problem that tax credits often went unclaimed by building owners or developers who were operating at a loss due to the economic recession: Grants are now available from the Treasury Department in lieu of certain tax credits. Specific types and sizes of projects may also qualify for loan, bond or grant programs.

For more information regarding the applicability of green building financial incentives to your business or project, please contact one of the Katten Muchin Rosenman LLP Sustainability and Climate Change attorneys listed below:

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State and local governments often take a different approach to incentives. Some state utility boards work with their regulated public utilities to provide energy efficiency rebates, and a number of local governments streamline the permit application and approval process or reduce permit fees for green projects. For example, the City of Chicago's Green Permit Program attempts to issue permits to qualifying projects within 15 to 30 days. Commercial projects must earn various levels of certification within the appropriate Leadership in Energy and Environmental Design (LEED) rating system developed by the U.S. Green Building Council. Projects that meet the most stringent sustainability guidelines may also obtain a partial waiver of consultant code review fees, up to $25,000.

It is critical that real estate or construction industry professionals considering a green building or retrofit assemble a team of design and consulting professionals who understand the regulatory maze of programs and qualification requirements, to determine whether the project can be designed to qualify for the potentially available government incentives. This analysis will facilitate a better understanding of the actual cost of including green building components or features in a building's project plans.

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