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Keeping PACE with Green Financial Incentives

The key to making some projects and investments viable, especially in today's tough real estate market, may be the continued expansion and use of sustainable development initiatives adopted by federal, state and local governments, as well as by private entities such as electric utilities and non-profit organizations. While the basic tools used are not new, their application in the sustainable development arena may provide significant opportunities in 2010 and beyond. This e-alert highlights PACE financing and other examples of such incentives.

PACE Financing for Energy-Efficient Retrofits

Property Assessed Clean Energy ("PACE") financing is a bond financing program under which bond proceeds are loaned to property owners (commercial or residential) to finance building retrofits that include the addition of renewable energy systems or energy-efficient improvements to their property. Property owner participation is voluntary and the loans attach to the property, not the individual. The property owners that opt into the program repay these loans over a period of years via a special annual assessment on their property tax bills. Enabling legislation for PACE programs has been enacted in 17 U.S. states and is expected to continue to expand. Recent efforts include the District of Columbia, which is considering legislation for a PACE bond program that would allow the District to issue a series of bonds up to \$250 million, and San Francisco, where legislation was recently signed to create the largest PACE program in the nation to date. San Francisco property owners will be able to apply for financing under its program in March 2010.

Green Loan Programs

Green loan programs can provide financing for renewable energy or energy-efficient systems or equipment to a variety of sectors (e.g., residential, commercial, public, etc.) at low-interest or zero-interest rates through utility companies or federal, state or local governments. In Texas, the LoneSTAR Program provides loans of up to \$5,000,000 for public buildings to install efficient technologies (such as solar water heat, solar space heat, photovoltaics, wind and geothermal heat pumps) for qualified projects with a payback period of 10 years or less. Similarly, residential developers in Germany (a leader in alternative energy development) whose projects meet certain sustainability criteria may be eligible to receive loans from the federal bank "Kreditanstalt für Wiederaufbau" at below-market rates if the energy efficiency of their buildings exceeds federal law requirements.

Subsidies for Renewable Energy Technology

In Germany, the new Renewable Energy Act has established subsidies to be paid by grid system operators to energy providers who generate and supply renewable energy to the grid. To promote investments and improvements in renewable energy technology, newer and developing production technologies (e.g., solar) are more heavily subsidized than more well-established technologies (e.g., wind).

Preferential Permitting

Cities and counties are beginning to use their permitting processes to provide for the priority handling of projects that meet sustainability goals and maximize the financial incentives available for such projects. For example, Seattle has established a “Priority Green” permitting process for innovative projects that are intended to serve as “visible models of high performance and sustainability” in the City. To qualify, applicants must, among other requirements, either complete the City’s “Priority Green Building Matrix” or submit a proposal that achieves a Platinum rating in the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED®) program or a five-star rating in the Seattle Area “Built Green” program. Chicago’s “Green Permit Program” allows for an expedited permitting process for qualified projects, waiver of permit fees up to \$25,000 and waiver of consultant review fees. Seattle, Austin and Pittsburgh are among the cities that permit developers to receive a “density bonus” that allows development beyond normal zoning standards, provided sustainable design techniques are used and the building improvements meet specified LEED® certification levels.

State Feed-in Tariffs

Certain states, such as California, Maine and Vermont, have passed legislation allowing for “feed-in tariffs” to obligate retail utilities to purchase electricity from renewable energy producers. Under a feed-in tariff, the utility provider is required to buy renewable electricity from eligible participants, subject to specified prices, terms and other conditions. The National Renewable Energy

Laboratory recently released its report titled “Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions” which examines current issues and possible workarounds that may allow renewable electricity to become more price competitive.

Federal Tax Credits

Certain products and materials used in building construction may be eligible for U.S. federal tax credits. For example, taxpayers may be eligible to receive a federal tax credit equal to 30% (up to a total credit of \$1,500) of the cost of biomass stoves, HVAC, insulation, roofing (metal and asphalt), water heaters (non-solar) and certain windows and doors that are “placed in service” between January 1, 2009 and December 31, 2010, and a federal tax credit equal to 30% (with no upper limit) of the cost of geothermal heat pumps, solar energy systems, small wind energy systems and fuel cells through 2016.

Property Tax Incentives

Property tax incentives relating to green improvements or systems also may be available in the form of exemptions, exclusions or credits. A typical property tax incentive provides for the exclusion of the value of a renewable energy system or improvement from the total appraised value of the property containing such system or improvement. In Texas, for example, the state offers a 100% property tax exemption on the appraised value of an on-site solar, wind or biomass power generating device.

In addition to the foregoing, there also are various other personal and corporate tax credits and deductions, production incentives, rebates, utility rate discounts and other programs that continue to be developed and adopted. The opportunities in this arena are constantly evolving.

The Business Opportunity

In this ever-changing environment, clients should examine whether green incentives and policies might impact their operations, site selection, strategy and investments. With 60+ LEED Accredited Professional (LEED®-AP) lawyers, along with the real estate, land use, tax and

governmental experience of these and other lawyers in the firm, K&L Gates is positioned around the globe to advise clients as they navigate the opportunities green initiatives and sustainable development may provide to their businesses and bottom lines.

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