



REAL ESTATE DEPARTMENT

# ALERT

## MANDATORY GREEN BUILDING STANDARDS COULD BE COMING SOON TO A MUNICIPALITY NEAR YOU

By Alexander Wixted

On Tuesday, August 5, 2008, Governor Jon Corzine signed into law an amendment to New Jersey's Municipal Land Use Law, *N.J.S.A. 40:55D:1 et. seq.* (MLUL), which expressly authorizes municipal planning boards to adopt green building and environmental sustainability elements for the municipal Master Plan. Approved as P.L. 2008, c. 54, the legislation addresses an emerging trend in land use – conservation of natural resources and the design and construction of environmentally sensitive buildings. A municipality's Master Plan is the blueprint for development upon which development regulations are based. While a few municipalities already have incorporated green building standards into their design standards, and a few even offer incentives to build "green," the passage of this law could bring the green-building trend to many planning departments throughout the state.

This legislation amends *N.J.S.A. 40:55D-28*, which outlines the categories of Master Plan elements, to expressly permit the adoption of a "green" element. Subsection 15, as added, permits "a green buildings and environmental sustainability plan element, which shall provide for, encourage, and

promote the efficient use of natural resources; consider the impact of buildings on the local, regional, and global environment; allow ecosystems to function naturally; conserve and reuse water; treat storm water on site; and optimize climatic conditions through site orientation and design."

This additional element serves many of the "key" land development measures closely regulated by state and federal agencies that regulate storm water management and the use of natural resources. While this element is not strictly limited to adoption of green building standards, it is possible that municipalities could rely on this legislation to require that any new construction satisfy some or all of the "green" building criteria set forth in the Leadership in Energy and Environmental Design (LEED) rating system of the U.S. Green Building Council or by regulations promulgated by a state agency.

Under the MLUL, the governing body of every municipality must provide for a general re-examination of its master plan and development regulations by the planning board at least every six years. Some planning boards decide to tackle this issue once its members

complete their summer vacation and the fall season begins. Furthermore, as the Council on Affordable Housing (COAH) recently published its Third Round affordable housing regulations, which are effective immediately, municipalities will be constrained to re-visit the housing element of the municipality's Master Plan. At that time, why not require the construction of environmentally-sensitive affordable housing? There is a bill pending in both houses of the legislature to require exactly that (See A1559; S701).

Building green raises a host of significant contractual issues. Architects, owners and developers should contact their legal advisors to sort through these issues. Fox Rothschild attorneys are prepared to assist you in this regard.

For more information about this alert, contact the author at 609.895.6730 or [awixed@foxrothschild.com](mailto:awixed@foxrothschild.com).

## Upcoming Program:

*Building Green...The Rewards and Risks*

**September 17, 2008**

**8:30 - 10:30 AM**

**The Linwood Country Club**

**500 Shore Road  
Linwood, NJ 08221**

For more information on the program, or to receive an invitation, please contact Maria Sothern at [msothern@foxrothschild.com](mailto:msothern@foxrothschild.com)



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