

Going Green?

A Look at Sustainability and its Implications

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Topics To Be Covered

- Terminology and lexicon
- Considerations and approach
- Legislative and regulatory outlook
- Carbon credits
- Green Marketing

Terms are not legally defined

- Sustainable
 - Green
 - Environmentally Friendly
 - Carbon Neutral
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- Long product life may complicate use of certain terms now when terms might be regulated in the future

Take a holistic approach

- At the outset, take a holistic approach that envisions phases of the project
- Cheaper than piecemeal approach
 - Planning ahead pays off, retrofits are very expensive

Why go green?

- Create greater value
- Payback
 - After time, some green investments pay for themselves
- Green Advertising
- Feel good
- Shelf Space
- Carbon Credits?

Be wary of unforeseen costs

- Doing good can sometimes create unforeseen liability
 - Example: Capturing runoff for infiltration and groundwater recharge may implicate water quality concerns
 - Example: Power transfer from one to another (vineyard/winery)
 - Can possibly violate Public Utility Commission rules or require the creation of a utility

LEED certification

- Rating system for measuring a development's "sustainability"
- Comes after your project is completed
- Require builders to meet this standard in development contract
- Energy prices fluctuate but long range will rise

Implication of the Election

- Agenda tempered by the economy and California budget deficit
- Energy/Energy security and environment = #2
- Transition team
- Close to cloture in the Senate
- Dingell vs. Waxman on Energy and Commerce Committee
- California legislature, more Democrats but Republicans still matter

Legislation

- Steinberg
 - SB 375
 - Tying transportation funding to development
- Nava
 - AB 1851
 - Regulation of greenhouse gas credits
- Dingell Boucher
 - Climate change draft federal legislation

Climate Change Legislation

- Cap and trade
 - Start with baseline, decline to goal over time
- Auction vs. allowances
- Preemption
- AB 32 and Western Climate Initiative

Carbon credits

- No mandatory market now
- Credits generally
 - Quantifiable
 - Enforceable
 - Real
 - Permanent
 - Surplus
- What about when we *do* have a carbon market?
 - “Additionality” concerns

Green Marketing

- Government has special role with green claims because most are not testable by consumers, unlike other claims (e.g., this detergent makes the whitest whites)
- FTC Guidelines
- EPA
- Lanham Act
- NAAG

Summary

- Terms are undefined, but will be one day
- Holistic approach will pay off in long run
- Try to foresee complications from doing good
- Ensure that LEED certification goals are memorialized in contracts
- Watch for pending legislation
- Look for valuable credits, loans, grants and partnership opportunities

Thank You!

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