PULLMAN &COMLEY LLC
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Green Development Alert

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Section 1603 Payments Available for Renewable Energy Projects

On December 17, 2010, President Obama signed H.R. 4853 (the sweeping tax legislation passed at the end of last year) into law. While maintaining the Bush-era tax cuts garnered most of the attention, the law also extended the program of allowing renewable energy tax grants in lieu of tax credits and 100 percent bonus depreciation, both of which were set to expire at the end of 2010. Section 1603 of the American Recovery and Reinvestment Act of 2009, also known as ARRA or the "Stimulus Bill," allows renewable energy developers to convert eligible federal investment tax credits to an up-front grant equal to the value of the credit. Depending on the proposed renewable energy source, the grant can be either 10 percent or 30 percent of the total project value. The Treasury Department reports that it has disbursed more than $5.83 billion as part of this program. Section 1603 payments are available for renewable energy projects such as solar, wind, geothermal, combined heat, biomass and landfill gas energy projects either placed in service or with some construction begun in 2009, 2010, and now 2011.

For eligible projects that are not already in service, construction must have begun in 2009, 2010 or 2011 and applications must be made after construction begins, but before October 1, 2012.

Certain tax-exempt entities, including 501(c) entities and real estate investment trusts (REITS) are either not eligible to receive cash grants or the grant value may be restricted. However, deal structuring can make it possible for these types of entities to take advantage of available cash grants. According to the Treasury Department, payments are generally made within 60 days of receipt of an application.

The Treasury Department's determination regarding eligibility for the 1603 program is final and no appeal right is available. Therefore, a developer must use caution prior to submitting an application to the program. The Treasury Department has published guidance on the tax grant program, available at http: www.treasury.gov/initiatives/documents/guidance.pdf. Finally, receipt of grants from the 1603 program does not require the project/property to comply with the requirements of the National Environmental Policy Act.