

GOING GREEN & FINANCIAL INCENTIVES

A. INTRODUCTION

Given the interest in green buildings and the protection of the environment, we have put together a bulletin of certain environmentally friendly programs and initiatives that you may be able to look at to obtain some financial incentives in your projects. The list is not intended to be exhaustive, but it gives you an idea of the types of programs that are currently being applied in the market.

B. FEDERATION OF CANADIAN MUNICIPALITIES

The Government of Canada endowed the Federation of Canadian Municipalities (FCM) with \$550 million to establish the Green Municipal Fund (GMF). GMF is a long-term source of financing for municipalities and their partners to develop communities that are more environmentally, socially, and economically sustainable.

The Fund provides low-interest loans and grants to municipalities that deliver leading examples of sustainable development; and builds capacity and shares the knowledge and experience gained by municipal leaders through GMF-funded studies and projects.¹

GMF grants can reimburse up to 50 percent of the total eligible costs² of a plan, up to a maximum grant amount of \$350,000.

C. ECOACTION ENERGY RETROFIT INCENTIVES (GOVERNMENT OF CANADA)

Homeowners, building owners and industries can take advantage of the ecoENERGY Retrofit grant program offered by Natural Resources Canada (NRCan).

¹ <http://www.sustainablecommunities.fcm.ca/files/GMF/Plans-documents/plans-application-guidelines-e.pdf>

² Eligible cash costs include all necessary direct costs incurred properly and reasonably by the Lead Applicant and invoiced against a contract for services that were necessary for the completion of the plan. Such costs may include

- any costs associated with hiring professional and technical consultants or contractors who are directly involved in the technical, engineering, environmental, or financial aspects of the proposed plan; and
- costs to consult and educate the community about the proposed plan, including surveys, website development, and other communication.

The Lead Applicant may include a portion of its staff time directly related to the proposed plan for partial reimbursement as eligible in-kind costs.



GOING GREEN & FINANCIAL INCENTIVES

Homeowners

The Government of Canada launched ecoENERGY Retrofit Homes program on April 1, 2007, which has paid out \$91 million to Canadian homeowners for more than 85,000 home retrofits. On March 30, 2009, the Honourable Lisa Raitt, Minister of NRCan, announced for a limited time, that grants under the ecoENERGY Retrofit Homes program will increase by 25 percent.³ The maximum grant one can receive per home or multi-unit residential building is \$5,000. Owners of low-rise residential rental properties may also qualify for a grant.

The residential energy assessment initiative has been developed by the Office of Energy Efficiency of NRCan to help property owners make retrofit choices that improve the comfort and energy efficiency of their home. Advisors will show homeowners how to cut heating and cooling costs.

NRCan has contracted with organizations across Canada to make the residential energy assessment service widely available. The Government of Canada provides grants to property owners who complete energy efficiency retrofits based on the energy advisors' recommendations. Owners of low-rise residential rental properties may also qualify for a grant.

Homeowners will then have until March 31, 2011, or 18 months from the date of their pre-retrofit evaluation report (whichever comes first) to complete the post-retrofit evaluation in order to receive a grant, subject to available funding.

Ontario provides a matching rebate to this federal rebate (see the Ontario Home Energy Savings Program below).⁴

Buildings

Organizations that own, manage or lease the following types of buildings can apply:

- Commercial and institutional buildings such as retail stores, hotels, restaurants, office buildings, schools, health care facilities, places of worship, and college and university buildings;
- Provincial, territorial and municipal buildings
- Multi-unit residential buildings
- Mixed-use commercial/residential buildings

³ An additional \$300 million is being invested in the ecoENERGY Retrofit-Homes program. This will allow as many as 200,000 more homeowners to participate in the program over the next two years. <http://www.ecoaction.gc.ca/news-nouvelles/20090330-1-eng.cfm>

⁴ <http://www.ecoaction.gc.ca/news-nouvelles/20090330-1-eng.cfm>

⁵ <http://www.oee.nrcan.gc.ca/commercial/financial-assistance/existing/retrofits/index.cfm?attr=20>

GOING GREEN & FINANCIAL INCENTIVES

Building owners and managers could receive up to \$10 per gigajoule of estimated energy savings, 25 percent of eligible project costs or \$50,000 per project (\$250,000 per organization).⁵ This program ends on March 12, 2012 or when all funds are committed.⁶

Industry

The ecoENERGY Retrofit Incentive for Industry Program was launched on April 1, 2007 and was originally scheduled to run until March 31, 2011. The program has been extended to March 31, 2012, subject to the availability of funds.

This program provides a financial incentive of up to 25 percent of project costs to a maximum of \$50,000 per application and \$250,000 per corporate entity to help small- and medium-sized industrial facilities implement energy-saving projects.⁷

D. ONTARIO HOME ENERGY SAVINGS PROGRAM (GOVERNMENT OF ONTARIO)

In addition to the federal ecoENERGY Retrofit Homes Program, the homeowner is eligible to the Ontario Home Energy Retrofit Program.

The Ontario Home Energy Savings Program (OHESP) is an energy conservation program from the Government of Ontario, which will pay half (up to \$150) of the Home Energy Audit that will find home's energy leaks and identify renovations homeowners can make to lower their energy bills.⁸ If some or all the upgrades suggested in the Energy Efficiency Report are made, homeowners could qualify for up to \$10,000 in Ontario and federal rebates. Owners of multi-unit low-rise residential buildings are eligible to receive up to \$1,000,000 over the life of the retrofit program (\$500,000 each from the Government of Ontario and the Government of Canada).

Please note that the Province of Ontario is currently reviewing the Ontario Home Energy Savings Program's rebate amounts.

⁶ <http://www.oee.nrcan.gc.ca/commercial/financial-assistance/existing/implementation.cfm?attr=20>

⁷ <http://www.oee.nrcan.gc.ca/industrial/financial-assistance/retrofit/index.cfm?attr=0>

⁸ The program offers grants to owners of low-rise residential properties defined under Parts 2 and 9 of the National Building Code of Canada.

GOING GREEN & FINANCIAL INCENTIVES

E. ONTARIO POWER AUTHORITY

The Cool Savings Rebate Program is available for residents and businesses (with residential-type systems) of Ontario who work with a participating contractor to:

- Replace an existing central air conditioning (CAC) system with one that meets or exceeds the ENERGY STAR® standard for CAC systems;
- Replace an existing furnace with a mid or high efficiency furnace or air handler with a fully variable speed electronically commutated motor (ECM); and
- Replace an existing non-programmable thermostat with a programmable thermostat

The program runs from January 1, 2009 through to December 31, 2009 and the following rebates are available:

- a) \$25 rebate for the installation of a programmable thermostat by a participating contractor;
- b) \$125 rebate for the replacement of an existing furnace with the purchase of a mid or high-efficiency furnace equipped with an Electronically Commutated Motor (ECM);
- c) \$250 rebate for the replacement of an existing central air conditioner with the purchase of an ENERGY STAR qualified central air conditioning system, heat pump, or ductless split system;
- d) \$400 rebate for the replacement of an existing central air conditioner with the purchase of an ENERGY STAR qualified, stand-alone CEE "Tier 2" level central air conditioning system (CAC) or heat pump.⁹

F. MINISTRY OF REVENUE- RETAIL SALES TAX EXEMPTION

Retail Sales Tax (RST) exemptions for certain new ENERGY STAR® qualified household products purchased, rented, or leased after July 19, 2007 and before September 1, 2009 are available. Qualifying household appliances are non-commercial refrigerators, dishwashers, clothes washers, freezers, dehumidifiers and room air conditioners.

A point-of-sale exemption is also available for certain lighting products listed as ENERGY STAR® qualified by the Office of Energy Efficiency, Natural Resources Canada. Qualifying lighting products are energy-efficient light bulbs and decorative light strings.¹⁰

⁹ <http://www.everykilowattcounts.ca/residential/coolingsavings/rebate-details.php>

¹⁰ <http://www.rev.gov.on.ca/english/notices/rst/68.html>

GOING GREEN & FINANCIAL INCENTIVES

G. TAX INCENTIVES FOR BUSINESS INVESTMENTS IN ENERGY CONSERVATION AND RENEWABLE ENERGY

Two specific taxation measures are available to encourage investments in energy efficiency and renewable energy projects:

Class 43.1 in Schedule II of the Income Tax Act

This measure allows taxpayers an accelerated write-off of certain equipment that is designed to produce energy in a more efficient way or to produce energy from alternative renewable sources. Class 43.1 provides an accelerated rate of write-off for certain capital expenditures on equipment that is designed to produce energy in a more efficient way or to produce energy from alternative renewable sources.

Class 43.1 allows taxpayers to deduct the cost of eligible equipment at up to 30 percent per year, on a declining balance basis.¹¹ Thus, there is a significant tax incentive for owning property that qualifies under s. 43.1.

Canadian Renewable and Conservation Expenses (CRCE)

The CRCE is a category of fully deductible expenditures associated with the start-up of renewable energy and energy conservation projects for which at least 50 percent of the capital costs of the property would be described in Class 43.1. CRCE category of expenditures was introduced in the 1996 Budget to allow investors to fully write-off certain intangible costs associated with investments in renewable energy and energy conservation projects. CRCE is intended to promote the development of conservation and renewable energy projects in the same way that is currently done for investments in other types of resource activities.

Under CRCE, eligible expenditures are 100 percent deductible in the year they are incurred or can be carried forward indefinitely for deduction in later years. These expenditures can also be renounced to shareholders through a flow-through share agreement, providing the agreement was entered into before the expense was incurred. To be eligible, costs must be incurred after December 5, 1996.

¹¹ http://www.energyalternatives.ca/PDF/NRCAN_tax_incentives.pdf (Tab 3)

GOING GREEN & FINANCIAL INCENTIVES

In general, the following types of systems qualify for CRCE or Class 43.1 write-off:

- certain cogeneration and specified-waste fuelled electrical generation systems
- small-scale hydro-electric installations (not exceeding 15 megawatts of average annual capacity)
- wind energy electrical generation systems
- enhanced combined cycle systems
- expansion engines
- photovoltaic electrical generation systems (three kilowatts capacity or larger)
- geo-thermal electrical generation systems
- electrical generating systems using solution gas that would otherwise be flared during the production of crude oil
- active solar systems (including groundsource heat pumps)
- heat recovery systems
- specified-waste fuelled heat production equipment

Moreover, intangible expenses eligible under CRCE include:

- the cost of pre-feasibility and feasibility studies of suitable sites and potential markets for projects that will have equipment included in Class 43.1
- costs related to determining the extent, location and quality of energy resources
- negotiation and site approval costs
- certain site preparation costs that are not directly related to the installation of equipment
- service connection costs incurred to transmit power from the project to the electric utility

GOING GREEN & FINANCIAL INCENTIVES

BLG COMMERCIAL REAL ESTATE GROUP

Our **Commercial Real Estate Group** consists of more than 50 experts across the country in all facets of commercial real estate law. We provide excellent creative legal advice to a broad spectrum of clients including developers, builders, pension funds, private financiers, lending institutions, private, public and crown corporations, national and international business communities, including aerospace and airlines, banking and finance, securities, manufacturing, construction, insurance, government agencies, natural resources, high technology, retail, transportation and real estate.

Our services include:

Acquisition and Development

Negotiation and preparation of all documentation relating to the acquisition, development, construction, financing and marketing of commercial, industrial and residential properties, including:

- Retail plazas
- Hotels
- Office buildings
- Business parks
- Apartment buildings
- Condominium projects
- Mixed-use developments
- Residential subdivisions
- Shopping centres

Public/Private Arrangements

Negotiation of arrangements between private enterprise and governmental bodies relating to land and infrastructure development.

Formulation and preparation of proposal calls for public/crown corporations and all ancillary agreements.

GOING GREEN & FINANCIAL INCENTIVES

Construction and Infrastructure

Negotiation and preparation of construction contracts.

Negotiation, structuring and financing of infrastructure projects.

Financing and Restructurings

Mortgage enforcement and preparation of all notices and court documents on behalf of lenders.

Negotiation and preparation of all financing documentation on behalf of private and institutional lenders and borrowers, for project and term financing.

Negotiation of arrangements between investors and developers pertaining to the restructuring of financial affairs, including attending to all due diligence matters.

Hotels

Negotiation and preparation of all documentation relating to the acquisition, development, construction and financing of hotels, including advising with respect to all related issues including hotel management agreements, licensing agreements, employment issues, co-owner arrangements, liquor licensing agreements and franchise agreements.

Environment

Performance of due diligence reviews and advising on compliance with laws and regulations, advising on obtaining required authorizations and licences and on co-ordinating environmental audits and clean-ups. Negotiation of environmental representations and warranties, advising on the management and disposal of contaminants and their transport, storage and export, and providing representation before administrative tribunals, the civil courts and in governmental inquiries related to these matters.

Municipal

Advise and assist on all aspects of zoning and planning work, including securing approval of amendments to zoning, advising on expropriation and permitted land uses and the appeal of realty tax assessments. In Québec this includes representation before the Tribunal Administratif du Québec to contest municipal valuation assessments of major hotel, office, commercial and industrial properties.

GOING GREEN & FINANCIAL INCENTIVES

Long Term Ground Lease

Negotiation and preparation of long-term ground leasing arrangements for both public and private sectors.

Commercial Leasing

Negotiation and preparation of all leasing documentation for retail centres, business parks, office buildings and warehouses.

Condominiums

Structuring, assistance, negotiation and preparation of all condominium documentation, including project financing documentation, declaration, by-laws and rules, disclosure statement, development agreements and sales agreements.

Syndications

Negotiation and preparation of all documentation required to form real estate syndicates and partnerships, as well as co-tenancy and joint venture arrangements for developers.

Limited Partnerships

Negotiation and preparation of all required documentation and advising with respect to the entering into and the structuring of limited partnerships.

OUR TEAM

The Borden Ladner Gervais LLP **Commercial Real Estate Law Alert** is necessarily of a general nature and cannot be regarded as legal advice. The firm would be pleased to provide additional details and to discuss the possible effects of these matters in specific situations.

If you have any questions about this alert, please contact us.

GOING GREEN & FINANCIAL INCENTIVES

Our National Commercial Real Estate Law group is chaired by:

David P.L. Mydske	Vancouver
604-640-4123	dmydske@blgcanada.com

Our Regional Commercial Real Estate group coordinators are:

Lawrence M. Kwinter	Calgary
403-232-9554	lkwinter@blgcanada.com
Sylvie Bouvette	Montréal
514-954-2507	sbouvette@blgcanada.com
Rocco D'Angelo	Ottawa
613-787-3549	rdangelo@blgcanada.com
Steven N. Iczkovitz	Toronto
416-367-6214	siczkovitz@blgcanada.com
Catherine E. Bray	Toronto
416-367-6164	cbray@blgcanada.com
David C.S. Longcroft	Vancouver
604-640-4211	dlongcroft@blgcanada.com

Author: Sybil Johnson-Abbott, BLG Ottawa

Visit our website at <http://www.blgcanada.com> where you can view the **Commercial Real Estate Law Alert** and other Borden Ladner Gervais LLP publications.

This newsletter is prepared as a service for our clients and other persons dealing with real estate issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP.

This Alert has been sent to you courtesy of Borden Ladner Gervais LLP. We respect your privacy, and wish to point out that our privacy policy relative to newsletters may be found at <http://www.blgcanada.com/home/website-electronic-privacy>. If you have received this alert in error, or if you do not wish to receive further newsletters, you may ask to have your contact information removed from our mailing lists by phoning 1-877-BLG-LAW1 or by emailing subscriptions@blgcanada.com.

© 2009 Borden Ladner Gervais LLP

Borden Ladner Gervais LLP
Lawyers • Patent &
Trade-mark Agents

Calgary

1000 Canterra Tower
400 Third Avenue S.W.
Calgary, Alberta, Canada
T2P 4H2
tel: 403 232-9500
fax: 403 266-1395

Montréal

1000 de La Gauchetière
Street West
Suite 900, Montréal,
Québec, Canada H3B 5H4
tel: 514 879-1212
fax: 514 954-1905

Ottawa

World Exchange Plaza
100 Queen St., Suite 1100
Ottawa, Ontario, Canada
K1P 1J9
tel: 613 237-5160
1-800-661-4237
legal fax: 613 230-8842
IP fax: 613 787-3558

Toronto

Scotia Plaza,
40 King Street West
Toronto, Ontario, Canada
M5H 3Y4
tel: 416 367-6000
fax: 416 367-6749

Vancouver

1200 Waterfront Centre
200 Burrard Street,
P.O. Box 48600
Vancouver, British Columbia,
Canada V7X 1T2
tel: 604 687-5744
fax: 604 687-1415

Waterloo Region

Waterloo City Centre
100 Regina Street South,
Suite 220
Waterloo, Ontario,
Canada N2J 4P9
tel: 519 579-5600
fax: 519 579-2725
IP fax: 519 741-9149

www.blgcanada.com

Borden Ladner Gervais LLP
is an Ontario Limited
Liability Partnership