

The CLCPA and Building Materials: Keeping an Eye on Embodied Carbon Considerations

By **Kimberly R. Nason** and
Sean M. Donahue
Phillips Lytle LLP

In 2019, New York's Climate Leadership and Community Protection Act (CLCPA) created aggressive goals for emissions reductions and renewable energy production. The CLCPA established a Climate Action Council (CAC) tasked with putting together a Scoping Plan to outline how New York State can meet these ambitious goals.

The Final Scoping Plan, adopted in December 2022, envisions significant changes across multiple sectors of New York's economy. There has been a significant focus on the building sector for emissions reductions as buildings are the largest source of greenhouse gas (GHG) emissions—more than agriculture, electricity, industry, transportation and waste—according to the 2022 Statewide GHG Emissions Report. As a result, much attention has been paid to the Scoping Plan's focus on building electrification and the associated updates to building and energy code requirements. A focus on building operation and electrification is only one side of the equation, however, since a significant amount of carbon emissions from the building sector comes from construction. It will be important to keep an eye on the concept of measuring "embodied carbon" (EC) in building materials going forward, as potential regulations, mandates and incentive programs could impact the cost and design of construction projects.

EC is the amount of carbon emissions from the entire lifecycle of a product, including emissions from minerals mining, manufacturing, transportation, construction and disposal. The Scoping Plan notes EC associated with construction "can be reduced through building reuse and through using lower carbon materials or carbon-sequestering products." The Scoping Plan recommends that State-funded projects reduce "carbon intensive" construction materials and ultimately "require an [EC] budget to be submitted as part of the permit process for all commercial and institutional new construction (and additions and alterations as applicable), immediately for State entities and no later than 2025 for local government entities." Thus, for new development, reducing EC in the construction process is a near-term focus for achieving the State's emissions reductions goals.

While the Scoping Plan has identified EC analysis as an important component of emissions reductions, a challenge with EC is quantification, specifically, determining how to calculate EC in building materials. Much of the analysis with respect to EC at this point is estimation. In order to implement changes to building codes and mandate embodied carbon considerations, standardization will be required. This includes the standardization of Environmental Product Declarations (EPDs), which are essentially "nutri-

tion labels" for EC in building components.

On the federal level, the Inflation Reduction Act (IRA) provides hundreds of millions of dollars for the development and standardization of EPDs for construction materials to assist designers, developers, investors and manufacturers in measuring, reporting and ultimately lowering EC in the construction process. Further, the IRA provides billions of dollars in funding for the use of low-EC building materials in public projects and government buildings. Recently, states have begun adopting laws related to EC in public procurement, including New York,

which passed the Low Embodied Carbon Concrete Leadership Act in late 2021. This legislation provides for the establishment of a stakeholder advisory group that will set clear standards for the procurement of low embodied carbon concrete for State projects.

Given the activity at both the state and federal levels, it is likely that EC will be an important component of project cost considerations and design going forward. It will be important to keep an eye on the emerging standardization of EPD labeling, and state and federal EC mandates and incentives available to aid in the transition

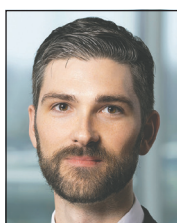
to low-EC construction.

Kimberly R. Nason is a partner at Phillips Lytle and member of the Real Estate and Energy Practice Teams. She focuses her practice on land use and zoning, environmental law and energy matters. She can be reached at knason@phillipslytle.com or (716) 504-5784.

Sean M. Donahue is an attorney at Phillips Lytle where he concentrates his practice on environment and energy law with a focus on environmental compliance, regulation, litigation and due diligence. He can be reached at sdonahue@phillipslytle.com or (716) 504-5741.

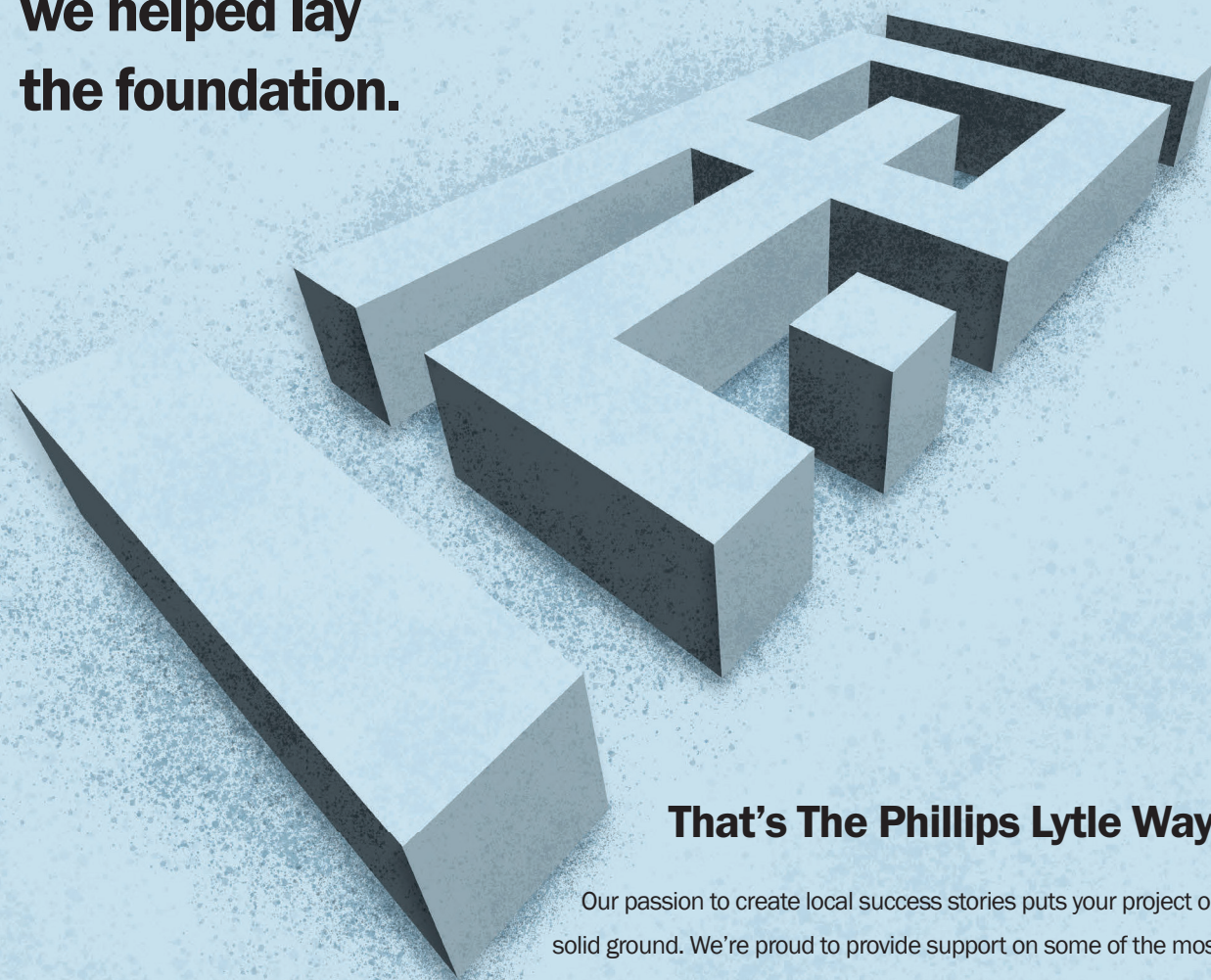


Kimberly R. Nason
Partner



Sean M. Donahue
Attorney

When our region wanted to spur economic development, we helped lay the foundation.



That's The Phillips Lytle Way.

Our passion to create local success stories puts your project on solid ground. We're proud to provide support on some of the most prominent projects in Western New York, including the Buffalo Bills New Stadium, JB2 Warehouse for Amazon, Lockport Memorial Hospital, Plug Power Inc., Salvation Army Campus Redevelopment, Seneca One, Shea's Patron Access and Facilities Improvement Project and the Statler Redevelopment Project. Our Real Estate Development Team has represented developers, lenders, private companies, governmental agencies, and not-for-profits in so many of the major development projects that have occurred in our region, including downtown Buffalo and on the waterfront. We combine the day-to-day "dirt work" of traditional real estate development with in-depth knowledge in the Brownfield Cleanup Program, land use and zoning, and PILOT Increment Financing. So no matter where you want to make your mark, what you want to create, or how challenging the obstacles you're facing, we have the experience and the drive to build on.

Prior results do not guarantee a future or similar outcome. © 2023 Phillips Lytle LLP



Phillips Lytle LLP

Visit us at [PhillipsLytle.com/RealEstateDevelopmentLaw](https://www.phillipslytle.com/RealEstateDevelopmentLaw)

ONE CANALSIDE, 125 MAIN STREET, BUFFALO, NY 14203 (716) 847-8400
NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | CHICAGO, IL | WASHINGTON, DC | CANADA: WATERLOO REGION