



Green Building in Los Angeles: The Exception Becomes the Rule City Council Acts to Mandate Adoption of LEED Building Standards

On April 22, 2008, the Los Angeles City Council voted to require that all large privately built commercial and residential developments slash projected energy and water use and reduce their overall “environmental footprint.”

The full ordinance, which will take effect in October 2008, requires developers who build in Los Angeles to comply with the LEED (Leadership in Energy and Environmental Design) standards for all projects at or above 50,000 square feet or 50 units. For its part, the City promises that it will work with builders to “speed up” approval and remove obstacles in the municipal code for elements of so-called sustainable or “Green” building design. “Green” building is loosely defined as the practice of designing and constructing buildings with increased efficiency in the areas of energy, water and material consumption and reduced building impacts on the occupants’ health. The City Council ordered its staff to report back in six months and advise whether the standards should include buildings of at least 25,000 square feet.

INCREASED RISK TO CONTRACTORS

The adoption of Green or “sustainable” building standards represents an increased risk to contractors. The primary problem is a lack of defined, industry accepted standards. “Green” is a moving target. Long lead times for “green” components, higher documentation and inspection burdens, heightened expectations of owners, and the greater complexities of integrating green components into an already complex design scheme illustrate the increased risks to contractors on these projects.

“GREEN” IS GROWING

Los Angeles’ ordinance follows a growing “green” trend in building. About one in ten new commercial buildings is considered “green.” About 15,000 of the new residential home starts that broke ground last year were “certified” green. The value of green building construction starts will exceed \$12 billion in 2008 and is projected to increase to \$60 billion by 2010. The recent growth in the green building trend, coupled with the

City of Los Angeles’ new mandate, make it vitally important for contractors to understand green building in general and LEED in particular in order to capture this new business without getting trapped by its potential pitfalls.

“LEED IN”

More than 120 localities have adopted mandatory green building standards, typically encompassed by the LEED standards, which have become the de facto national baseline for green building.

LEED is the United States Green Building Council’s (“USGBC”) effort to provide a national standard for what constitutes a “green building,” which results in a smaller environmental impact by utilizing numerous building and design elements to, among other things, conserve water and energy resources and encourage centralized transportation.

As state and local governing bodies race to implement new green regulations and associated building requirements, there appears to be a number of competing threads in different building standards. Federal, state, and local agencies do not appear to be striving for coherent, comprehensive building regulation standards, but rather they are simply jumping on the green building bandwagon. This trend can be attributed to factors such as election year promises to reduce the anticipated future carbon footprint of municipalities. In addition, some cities, Los Angeles and San Francisco in particular, have been fighting a bloody war of compassion to prove that theirs is the greener city. The new measures seem to come with little concern for the impact of the new regulations on the construction industry and eventual end users of the buildings, such as higher construction costs, maintenance costs and rents.

Through LEED, the USGBC offers seven distinct standards to certify a development or property as “green,” based on the classification of the buildings. There are also four increasingly stringent levels of LEED certification, including certified, silver, gold, and platinum.

Los Angeles’ proposed ordinance requires only the “certified” level of LEED compliance. The difference in the certification levels is based upon the points awarded for “sustainable” elements successfully incorporated into the overall design, actually achieved in the field, and certified (via inspection) throughout the course of construction. LEED standards contain many areas of subjectivity on the part of those responsible for “certifying” the building elements as sufficiently green enough to award

the particular certification sought. Given such subjectivity, this system could be fraught with peril for builders trying to achieve the new mandated requirements while maintaining strict adherence to increasingly tight budgets and timelines for construction.

POSSIBLE PROBLEMS

As public agencies rush to develop green building standards, they are expected to continue adopting the everchanging LEED standards as building materials and design methods advance. With the LEED standard constantly changing to embrace new technologies and techniques, it will be critical for all parties involved in the construction process to be clear on not only the new green terminology, but the specific certifications and requirements necessary to obtain the specific LEED certification required by the specific jurisdiction.

With certain financial and tax incentives offered to promote the use of green building standards, failure to achieve the mandated elements on a timely basis could prove financially disastrous for an owner or developer who is not communicating clearly with his design and building teams. It remains to be seen, for example, what financial impact the failure to meet certification levels could have on tax incentives that were already earmarked for a LEED Platinum building which only obtains a LEED Gold certification.

UNFUNDED MANDATE

Critics from the building industry have voiced their concerns about an unfunded mandate being placed on the backs of builders. The Building Industry Association has suggested that the City of Los Angeles needs to develop its own, narrowly tailored rules rather than relying on the one-size-fits-all standards represented by LEED.

CONCLUSION

The best advice, given the clear momentum towards green building, is to become conversant in the new terminology and design techniques for green, sustainable, and “high-performance” buildings, and to carefully review applicable standards at the outset of each new project with your legal team.

A formal and detailed review of contract requirements and specifications for a LEEDS or “Green” project with the contractor’s legal team can identify potential problems and be used to develop a plan to ensure these problems are avoided. Anticipated risks can be identified and properly accounted for in the contractor’s overall bid package. An

ounce of legal prevention in the “Green” project planning for contractors is worth a pound of back-charged cures.

All of these subjects will be covered at length during the upcoming Contractors Legal Forum (CLF), a presentation by the Atkinson, Andelson, Loya, Ruud & Romo law firm. Owners, contractors, subcontractors and material suppliers interested in these issues and preparing their companies to profit from these ongoing changes should mark their calendars now for the CLF scheduled for Friday, September 19, 2008. Companies interested in attending the CLF should contact Jane Guesnon at (562) 653-3837 or visit our website at www.aalrr.com.

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