

California's Statewide "Green" Building Code New Challenges and Opportunities

In July of 2008, the California Building Standards Commission unanimously adopted the nation's first statewide "green" building code. The California "Green" Building Standards Code will be Part 11 of Title 24, which is commonly known as the California Building Standards Code. Implementation of the new code will lead to improved energy efficiency and reduced water consumption while reducing the carbon footprint of all new buildings in California, including single family homes, health care facilities, schools and commercial buildings.

New green building code concepts are outlined below:

Planning and design

- Preservation and use of available natural resources
- more stringent management of storm water during construction

Energy efficiency

- 15% reduction in building energy use over current standards (will make CA homes 50 percent more efficient than homes built to national energy standards).

Water efficiency and conservation

- 20% indoor water use reduction primarily through improvement in efficiencies for commercial and residential plumbing fixtures
- 50% landscape water use reduction

Material conservation and resource efficiency

- 50% reduction in construction waste by recycling or salvage for reuse of non-hazardous construction and demolition debris
- Requires 10% of construction materials to be produced in California or within 500 miles of the site
- Encourages the use of renewable, reused and recycled materials

Environmental air quality

- Low or no-VOC (volatile organic compound) adhesives, paints and coatings
- High-efficiency air conditioning filters to better filter our dust and particulates and always-on exhaust fans to ensure better fresh air circulation in home.

The first version of the new code contains voluntary standards that will be phased in and become mandatory beginning with the next building code revision in 2010. The code will then be updated on an annual basis to incorporate new technology and methods of construction. The requirements vary by building type and size, with a delayed implementation of housing mandates and voluntary standards for hospitals and other non-residential structures.

Risk Management Challenges and Risk Transfer

From a risk management standpoint, a shared risk is often the best means to assure that the project obtains the objectives of the parties. Unreasonable risk allocations, exculpatory contract provisions or unreasonable limitations on liability are often counter-productive. The contract documents should not only encourage parties to be diligent in meeting the objectives of a project, but to work together with the other members of the project team to meet these objectives. A balanced approach, which encourages the project team to cooperate and work together effectively, is typically in everyone's interest. Some key issues and risks to look out for:

Compliance Issues	Added Financial Risk and Potential "Green" Liabilities	
<ul style="list-style-type: none"> ➤ <i>Compliance with developing green building codes and local requirements.</i> ➤ <i>Compliance with contract requirements related to certification levels.</i> ➤ <i>Compliance with contract specifications related to energy and operational performance.</i> 	<ul style="list-style-type: none"> ➤ Obtaining tax incentives and meeting investment criteria. ➤ Additional time and cost related to the design, approval and fabrication of new building products and systems. ➤ Ability to fast track projects, design-build elements of projects and to coordinate elements of the design and construction. 	<ul style="list-style-type: none"> ➤ Failure of new green products and systems to perform to traditional standards. ➤ Problems related to sequencing, constructability and commissioning of new systems, products and processes.

Where key certifications or performance criteria are critical to an owner, insurance or bonding should be considered, along with adequate project controls and a well considered contractual risk allocation. While bonding is currently available, professional liability is typically the only type of insurance which will cover economic loss such as delay or damages due to improper design. Professional liability insurance is typically expensive and written with relatively low limits. Usually, a contractor's commercial general liability coverage will only provide coverage for property damage that does not result from improper design. It may be sometime before commercial liability insurance coverage for contractors will be available to cover most of the green risks identified above.

Opportunities

In the competition for new projects, design and construction professionals tout the advantages and anticipated benefits of building green or sustainable projects, and their special expertise in the design or construction of green projects. Owners and developers will no doubt expect design professionals to prepare construction documents to obtain these benefits, and contractors to comply with these contract documents and the new green building standards mandated by local building departments in both private and public projects. In light of these new standards and expectations, parties will likely contract to ensure that projects obtain a particular certification level, or otherwise meet higher energy performance standards.

Industry Recommendations

The building industry needs to develop a comprehensive database of green projects, products, processes, and model specifications. The primary beneficiaries of such a database would be the public and private developers, and the environment in general. Historically, professional and trade organizations have different interests in the development of technology. In fact, oftentimes members within a professional or trade organization do not want to share key information with competitors within the organization. Similarly, technical committees of various trades and professions sometimes guard their positions and the commercial interests or financial advantages of having control of these committees. Therefore it is critical that national, statewide and local public agencies, private owners, and developers take the lead in working with business, professional and trade groups in advancing green building technology and in streamlining the green building process.

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Other key green legislation:

Green Building Initiative (Executive Order S-20-04) set a goal of reducing energy use in state-owned buildings by 20 percent by 2015 (from a 2003 baseline) and encourages the private commercial sector to set the same goal. The order also directed compliance to the "Green Building Action Plan," which details the measures the state will take to meet these goals.

Global Warming Solutions Act (AB 32, now Health & Safety Code 38500 et seq.) The Global Warming Solutions Act requires a cap on greenhouse gas emissions by 2020, mandatory emissions reporting, and the development of a market-based compliance program to achieve the emissions cap in the most cost effective and technologically feasible manner with the least impact on California consumers and business. Among the many public policy initiatives proposed to meet these goals is a requirement that government and private commercial buildings reduce their electricity consumption by 10 percent/square foot by 2010, and 20 percent by 2015.

SB 375, a bill aimed to reform land-use planning and decision-making in ways designed to increase the certainty that state housing needs will be met, better integrate transportation planning with development and reduce greenhouse gas (GHG) emissions. If approved by the Legislature, SB 375 (Steinberg) will establish a road-map for compliance with AB 32, the state's new law that sets long-term targets for reducing GHG emissions. The bill now returns to the Senate where, following possible reviews by relevant policy committees, will receive a vote on final passage by that house. The measure then goes to the Governor who is expected to sign it.