

Green Building & Climate Change: Another LEEDing Move!

The U.S. Green Building Council ("USGBC") now mandates at least two "Optimize Energy Performance" points for all Leadership in Energy and Environmental Design ("LEED") commercial projects registered after June 27, 2007. Of course, these points will also count for the total LEED score of the project. Previously, energy points were not required so that it was possible for a project to achieve LEED certification without having any energy points. The mandatory "Optimize Energy Performance" points do not extend to projects registered under LEED for Homes or LEED for Neighborhood Development at this time. USGBC is helping projects achieve these newly required points by developing a prescriptive compliance path as an alternative to energy modeling.

This change is aligned with the USGBC's commitment to reducing the impact of buildings on climate change. This change is significant because buildings have big impacts on the environment including: 65.2% of total U.S. electricity consumptionⁱ, > 36% of total U.S. primary energy useⁱⁱ, 30% of total U.S. greenhouse gas emissionsⁱⁱⁱ, and 136 million tons of construction and demolition waste in the U.S. (approx 2.8lbs/person/day)^{iv}. Reducing the energy consumption of U.S. buildings will be a major part of reducing climate impact and reaching energy security. The USGBC believes that the new mandatory energy points will improve energy performance of new construction by 14% and existing buildings by 7%.^v

Definitions & Costs

High-performance (green) buildings are facilities designed, built, operated, renovated, and disposed of using ecological principles for the purpose of promoting occupant health and resource efficiency and minimizing the impacts on the natural environment. A common misperception is that, while green buildings have important benefits, they entail significant additional costs. A study by Gregory H. Kats on behalf of The Massachusetts Technology Collaborative found that the cost of building green is an additional 2% to 3% or \$3 – 5/ft².^{vi} However, this additional investment can be recouped in a short time frame due to reduced energy and water consumption. Green buildings can consume 30% less energy than a conventional building, with a payback of 3 to 7 years depending on its energy efficiency and the cost of energy. Certifying a project requires the registration of the project with the certifying organization and lining up the appropriate professional to credential the building who will ensure that all the required information is collected and retained for the certification.

We are happy to discuss the details of the certification process with you and to make sure that you have the appropriate language in your construction contracts to meet the requirements of the appropriate certifying organization.

Consumer Demand

As consumer awareness about climate change and energy independence continues to grow, coupled with

ⁱ U.S. Department of Energy, Energy Information Administration, March 2001, Monthly Energy Review.

ⁱⁱ Id.

ⁱⁱⁱ U.S. Department of Energy, Energy Information Administration, "Emissions of Greenhouse Gases in the United States 1999."

^{iv} U.S. EPA, 1998, "Characterization of Building-Related Construction and Demolition Debris in the United States."

^v These energy reductions are compared to a baseline computer model based on ASHRAE/IESNA Standard 90.1-2004.

^{vi} The additional costs cited here are for buildings certified to LEED Silver or Gold level. Facilities with a LEED Certified rating are estimated to cost about 1% more than conventional buildings while Platinum Buildings typically cost in the range of an additional 6% or more.

Green Building & Climate Change: Another LEEDing Move!

increasing energy costs, consumer demand for green buildings and sustainable development will continue to increase. You should consider whether the time is ripe to take advantage of the growing demand for energy efficiency by establishing yourself as a leader in sustainable development and green building. In addition, you may be able to capitalize through enhanced marketing opportunities for your sustainable development projects.

Incentives Available

There are a variety of incentives available for building green homes and sustainable developments including reduced permit fees, fast-track permitting of qualified projects, and rebates. Significant federal tax credits are available to builders under The Energy Policy Act of 2005. There are also a variety of incentives available under the Florida Renewable Energy Technologies & Energy Efficiency Act, including rebates for installation of solar systems, grants, and incentives. Home buyers can benefit directly by qualifying for energy efficient mortgages which reduce their interest rates to offset increased costs in infrastructure investment made for energy efficiency. Most utilities offer incentives as well for installing efficient appliances and for enhanced building envelope insulation. Therefore the incentives available will depend both on the product type and project location. We are happy to discuss the types of incentives that may be available for your project with you.

Florida Energy Policy Evolving

Though Governor Crist vetoed the Energy Act in June, there are a number of commissions currently working on

recommendations that will impact Florida energy policy and specifically the built environment including the Florida Energy Commission the Florida Department of Community Affairs, and the Florida Building Commission (recommendations for the development of a model residential energy efficiency ordinance are due March 1, 2008).

Carlton Fields' lawyers can assist you with exploring the sustainable development and green building certifying agencies active in Florida such as USGBC, the Florida Green Building Coalition, Energy Star, Green Globes, and Audubon International, as well as accessing the incentives that may be available for your projects. In addition, our lawyers can help you draft appropriate provisions in your construction contracts to address sustainable development certification issues pre-construction, and the necessary covenants and restrictions for your development documents to help ensure that projects are maintained as sustainable developments post-construction.

For more information, please contact **Robert W. Pass** at (850) 513-3608 or rpass@carltonfields.com, or **Nancy G. Linnan** at (850) 513-3611 or nlinnan@carltonfields.com, or **Nicole C. Kibert** at or (813) 229-4205 or nkibert@carltonfields.com.



Pass



Linnan



Kibert

This publication is not intended as, and does not represent legal advice and should not be relied upon to take the place of such advice. Since factual situations will vary, please feel free to contact a member of the firm for specific interpretation and advice, if you have a question regarding the impact of the information contained herein. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.