

'CalGreen': Green Building in California Moves Beyond Voluntary Measures

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Voluntary green building measures have become increasingly popular in California, and even world wide, over the last several decades. Beginning with rudimentary measures, such as installing weather stripping or retrofit insulation, and more recently with sophisticated protocols such as the Leadership in Energy and Environmental Design (LEED) certification, building owners large and small have progressively committed to minimizing their projects' environmental impact. Some are motivated from a sense of ethical obligation, others by pecuniary concerns such as energy costs or tax breaks. But such individual incentives are becoming irrelevant. Starting this year, California has for the first time imposed mandatory statewide green building measures as part of the recently enacted California Green Building Standards Code, referred to as "CalGreen."

CalGreen is administered as Part 11 of the California Building Code, in Title 24 of the California Code of Regulation. However, unlike the rest of the Building Code, which primarily addresses safety concerns, CalGreen's priority is conserving resources and minimizing pollutants. The latest draft mandates green construction, such as plumbing with a 20% reduction in water flow, recycling of 50 percent of construction waste, and use of low "volatile organic chemical" (VOC) paint, carpet and flooring.

Green Days Are Here

The 2008 version of CalGreen, currently in effect, was the first to include mandatory

measures, though most of its provisions are voluntary. Whether a particular provision is mandatory depends on the type of occupancy and the governing agency with authority for that occupancy. The identification of mandatory measures for each agency and the effective dates are reflected in an "Application Matrix" at the end of the code. In the 2008 version, the mandatory measures apply only to low-rise residential structures governed by the Department of Housing and Community Development.

The first of these measures became effective on January 1, 2010, governing site development, energy efficiency, construction waste and indoor environmental quality. The provisions addressing residential water use do not become effective until July 1, 2011, although the later version of CalGreen may accelerate this date. Since August 1, 2009, local jurisdictions have been free to adopt components of CalGreen by mandatory ordinance. Local jurisdictions are also entitled to adopt more stringent measures, including LEED standards, and many have done so.

The 2010 version of CalGreen was recently approved by the California Building Standards Commission, the executive agency responsible for administering the Building Code. Its mandatory provisions are much farther reaching in scope and effect than the prior version. All of the responsible agencies have adopted at least some of the mandatory provisions. All of the provisions that have been adopted as mandatory are scheduled to take effect January 1, 2011. Like the earlier version, local jurisdictions can adopt stricter standards.

Save the Water, Clear the Air

CalGreen encompasses five distinct "green" areas: (1) Planning and Design; (2) Energy Efficiency; (3) Water Efficiency and Conservation; (4) Material Conservation and Resources Efficiency; and (5) Environmental Quality.

Planning and Design addresses the necessary approaches at the outset of a project, such as development of proper storm water

drainage and retention. Energy Efficiency covers a variety of areas, such as the building envelope, "Energy Star" appliances, HVAC design, and use of renewable energy. Water Efficiency and Conservation regulates indoor water use, including installation of meters and reduced flow plumbing, as well as outdoor water use and recycled/gray water systems. Material Conservation and Resource Efficiency focuses on reducing job site waste, such as using local and recycled materials, and recycling of jobsite waste. Environmental Quality covers the reduction of air contaminants such as VOC's in paint and fiberboard, and also mandates proper ventilation to minimize such pollutants.

CalGreen Is Not LEED

CalGreen is structured similarly to LEED standards, encompassing several distinct aspects of the building process, components and functions. Compliance with all of CalGreen's provisions, both mandatory and voluntary, is roughly equivalent to a LEED "Silver Rating." That said, CalGreen is fundamentally different from LEED. CalGreen is a legal requirement, enforced by the state. LEED, on the other hand, is a privately developed standard, administered by a non-profit entity, the United States Green Building Council (USGBC). LEED standards only become project requirements if they are specified by contract, and they are enforced through contract provisions, which typically provide for third-party verification. Private LEED certification is verified based on the design documents, whereas compliance with CalGreen and more stringent ordinances is approved through on-site inspection.

These differences will make compliance particularly challenging for projects in local jurisdictions that require LEED certification (such as Los Angeles and San Francisco). On those projects, contractors will have to comply with both CalGreen and LEED requirements. Where those requirements conflict, they will have to determine which is "more stringent" and comply with that requirement.

Make Your Contracts Green

Contract terms and conditions allocating risk may ultimately need to be modified to address special issues posed by CalGreen. For example, one of the primary benefits owners will expect from green construction requirements are the energy and water cost savings they anticipate over the life of the building. Unless the contract says otherwise, design professionals or contractors that breach those requirements will be potentially liable for the cost savings owners can show they would have enjoyed but for the breach. Since these will usually be both substantial and difficult to prove, owners may push to cover them in liquidated damages provisions, while design professional and contractors may seek to exclude or limit recovery through limitation of liability provisions.

A Template for the Future

The 2010 CalGreen contains a number of sections in the mandatory provisions that are “reserved” for future regu-

lation. These range from deconstruction and reuse of existing structures to mandating efficient framing techniques. There is also still a large section that is entirely voluntary for both residential and non-residential structures. If the evolution of the code from its 2008 version to the 2010 version is any guide, it is likely that many of these voluntary provisions will become mandatory in future versions of CalGreen.

California continues to lead the nation and the world on these environmental issues. CalGreen is not only building on itself with each successive version, but also serving as a global vanguard for green construction laws. The International Code Council has announced it is developing a new code for commercial buildings entitled the “International Green Construction Code,” and will use the current CalGreen code as a key reference document. A committee of experts, including David Walls of the California

Building Standards Commission, is currently meeting to draft this International Green Construction Code and present it for public comment.

Green construction is no longer just a trend, it is now an integral component of building practices in California. Contractors need to be prepared for the CalGreen of today and anticipate the CalGreen of tomorrow in order to avoid the pitfalls of these new requirements and to seize the opportunities that they provide. 🏡

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