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Guest Comment: New LEED laws require fresh look at old practices

By: Thomas R. Petty

In the shadows of a recession in which few commercial buildings have been built, new laws are taking effect that will change dramatically how buildings will be built in the future.

Certification in the U.S. Green Building Council's program for Leadership in Energy and Environmental Design — once a matter of choice or a means to take advantage of government incentives — is becoming the law across the region.

In the District, every new or substantially renovated nonresidential privately owned building with at least 50,000 square feet of gross floor area must submit a green building checklist with its application for a building permit. Beginning Jan. 1, 2012, every new nonresidential building, regardless of size, must be LEED certified.

In Montgomery County, every new or extensively modified commercial or multifamily residential building with at least 10,000 square feet of gross floor area must be LEED certified.

In Arlington, all site-plan projects must hire a LEED-accredited professional as a member of the design and construction team and must submit a LEED scorecard with the site-plan application explaining how the project will satisfy, at a minimum, all LEED prerequisites and earn enough additional points to be LEED-certified. To encourage projects that do not have to submit to the site-plan approval process to achieve LEED certification, the county offers them higher-density allowances, "front of the line" plan review and expedited permitting.

In Alexandria, every new commercial building must achieve LEED Silver certification.

In jurisdictions that require some form of LEED certification, businesses engaged in commercial real estate need to consider how these new laws and regulations will affect their way of doing business.

In some instances, LEED may challenge commonly held assumptions. For instance, in new construction, LEED points can be earned by providing parking that does not exceed minimum parking requirements. Traditionally, many developers have sought to provide more parking than required as an amenity.

One important step to achieving and maintaining the required level of LEED certification is to engage LEED-accredited professionals not only on the design and construction teams but also on legal, marketing, management and leasing teams. A LEED-accredited professional is someone accredited by the Green Building Certification Institute as having knowledge in green building practices generally and the LEED certification process in particular.

Another critical step is to incorporate LEED-related and other "green" provisions into construction documents, leases, property management agreements and other real estate-related agreements. LEED certification is not entirely objective, and many LEED prerequisites and credits require careful coordination and diligent adherence to policies and procedures.

In new construction intended to qualify for LEED certification, it is important to specify LEED requirements and responsibilities clearly in all construction documents. It may be useful to explain the relevance of unfamiliar requirements. It is critical to ensure communication and coordination among all parties.

For example, multiple trades may be involved in the work necessary to increase outdoor air ventilation to the standard required for LEED credit. If any trade deviates from the plans or substitutes materials that otherwise might be considered acceptable, the LEED credit could be lost. If additional equipment is needed to earn the increased ventilation credit, the energy consumed by additional equipment could jeopardize the building's energy-performance credits.

In an industry where "substantial performance" is often the norm, exacting performance may be required to satisfy LEED.

To maintain an existing building's LEED certification, it may be necessary for a landlord to require tenants to provide information not customarily requested of tenants, such as number of occupants, number of personal computers, hours of operation and occupant comfort.

A landlord might also want to require tenants and contractors to comply with specific recycling policies, construction waste management policies, "green" cleaning and pest management policies and "green" purchasing policies.

LEED certification has an impact on — and relies upon — more than just good design. New laws that require LEED certification will command businesses engaged in commercial real estate to take a fresh look at familiar ways of doing business.

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