

Green Building & Energy Technology

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Green Building Newsletter

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To our clients and friends:

We are pleased to present you with our October issue of Mintz Levin's *Green Building Newsletter*.

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Law & Policy Updates:

The LEED v4 (formerly LEED 2012) Controversy

BY JENNIFER SACCO SMITH

The US Green Building Council (USGBC) aspires to update its Leadership in Energy and Environmental Design (LEED) rating system every few years, with a goal of continuously improving its sustainable building standards. There has been some [controversy over the upcoming update](#) (originally called LEED 2012, but now rebranded as LEED v4) and about whether the federal government, and more specifically, the US General Services Administration (GSA) will use LEED v4 to evaluate the level of sustainability of its building program for the next five years.¹ This follows Congressional action late last year limiting the Department of Defense's ability to pursue certain levels of LEED certification.² While there are some broader philosophical disputes about the wisdom of the federal government adopting LEED standards, the controversy over the LEED update stems in part from run of the mill concerns that LEED may disfavor suppliers of certain types of construction materials. In response to concerns among its members on this point, the USGBC announced that it would delay the ballot to approve LEED v4.

Some US timber interests object to use of the Forest Stewardship Council (FSC) certification as the basis for awarding points for LEED for New Construction projects, and the timber interests would like a less demanding standard. On May 21, 2012, in a letter to the USGBC (the "Timber Letter"), several members of Congress urged the USGBC to accept all credible forest management certification systems including the Sustainable Forestry Initiative (SFI) and the American Tree Farm System (ATFS).³ The Timber Letter objected to the use of the FSC standard or a USGBC-approved equivalent as the only basis

for points under the new “Responsible Extraction of Raw Materials” LEED credit proposed for LEED v4. The Timber Letter stated that 86 million acres or three-quarters of domestically certified forests are certified under non-FSC standards, including SFI and ATFS standards. Meanwhile, only a small percentage of FSC certified forests are actually located within the United States. However, this does not necessarily mean that a project would have to buy foreign timber to qualify for the LEED credit for Responsible Extraction of Raw Materials.

The second industry group that has expressed concern with the latest version of LEED is the American Chemistry Council (ACC). The ACC has argued that the proposed changes to LEED would arbitrarily limit certain chemicals that are used in important products, including plastic insulation, vinyl windows, reflective roofing and polycarbonate glazing. Building on the ACC’s concerns, the Plastic Pipe and Fittings Association stressed their opposition of the proposed LEED standards that prefer alternatives to the use of PVC pipe. In the ACC’s letter to the GSA, the ACC urged reconsideration of the GSA’s recommendation of use of the LEED green building rating system to evaluate the GSA’s buildings. The ACC urged that the proposed changes to LEED discourage energy efficient products and jeopardize jobs, and give the “perception” that plastic products are bad. Ten days following the ACC’s letter to the GSA, 56 members of the House asked that the GSA stop using LEED to evaluate the level of sustainability of its buildings. As a response to the actions of the House, the USGBC launched a national advocacy initiative to encourage the GSA to continue using LEED as a building rating tool for federal buildings under GSA’s jurisdiction, and on July 26, 2012, over 1,200 business organizations sent a letter to the GSA supporting that notion, commending GSA for successfully using LEED to reduce operating costs and impacts of federal buildings.

LEED does not require a project to use any wood at all or to use chemical-free products. Rather, a credit for certified wood is available if a project chooses to use certified wood, and the more credits a project achieves, the higher its level of LEED certification will be. Likewise, a credit for chemical-free products can be obtained if a project chooses to use products without certain chemicals. These are not LEED prerequisites; they are not required in order to seek LEED certification, and buildings may achieve LEED certification without certified wood and chemical-free products.

The concern with the new LEED standards is not limited to materials suppliers, and in a June article for *Environmental Building News*, Nadav Malin outlined three principle concerns among architects and other building industry professionals with the new LEED standards: (1) that “the proposed changes were simply too much and too fast, especially in a weak real estate market”; (2) that “[s]ome of the changes need more refinement, especially significant changes in the Materials & Resources category...”; and (3) necessary “[t]ools and resources required to achieve credits would not be widely available by the time the new system was slated to launch in November 2012.”⁴

These issues raised by industry leaders to Congress and in turn, the GSA, are important to consider because the federal government is the single largest user of the LEED rating systems. Federal government buildings make up 7% of the total number of LEED certified buildings and 11.5% of the total number of pending certifications.⁵ Moreover, over 27% of the total number of LEED certified buildings are owned by the federal, state, and local governments combined.⁶ A federal government departure from LEED would have a material impact on the number of LEED certifications, though the federal share of LEED certifications is not huge. The bigger issue is that if LEED becomes subject to interest group lobbying, then state and local governments may become less willing to adopt green building requirements. LEED’s big accomplishment has been its ability to inspire policy changes at all levels of government, something that could be short-circuited. That said, the pushback on the LEED standards is in some ways a sign of its success – green building has now become big enough that it is worth fighting about.

While over 21,000 public comments on LEED v4 have already been collected and

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responded to individually, the USGBC has scheduled an unprecedented fifth public comment period scheduled to run from October 2, 2012 through December 10, 2012. No doubt, there will be much discussion on the issues presented in this article during the tenth annual [Greenbuild International Conference and Expo](#) in San Francisco November 14-16, 2012.

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¹ The Energy Independence and Security Act of 2007 (EISA) requires GSA to reevaluate the rating systems every five years. <http://www.gsa.gov/portal/category/25999>

² National Defense Authorization Act. <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>

³

<http://thompson.house.gov/sites/thompson.house.gov/files/Member%20letter%20to%20USGBC%20-%20LEED%20standards.pdf>

⁴ <http://www.buildinggreen.com/auth/article.cfm/2012/6/4/LEED-2012-Postponed-to-2013-Renamed-LEED-v4/>

⁵ <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1779>

⁶ *Id.*

Related Industry Events

Fourth Future Energy Investor Conference — Call for Start-Up Applications

[Future Energy](#) is a start-up pitch contest for energy and clean tech start-ups. At the conference, energy and clean tech start-up companies present to a panel of venture capital and corporate investors for feedback and a chance at investment. The event will be held on Thursday, November 14 in New York City and [applications to present are due by Friday, October 12](#).

Each Future Energy event features pitches from eight early-stage energy technology and clean tech start-ups. A panel of venture capital investors provides feedback and advice for each presenter. The audience — composed of energy entrepreneurs, researchers, investors, and press — votes on its favorite start-ups to allocate prizes. Winners from the first three Future Energy events include Alteros Energy, Pika Energy, and Greenavise.

Since 2008, over 700 startup companies have presented at Ultra Light Startups events. Of these, over 20% have raised angel funding and over 6% have received venture capital funding. In addition, Future Energy events offer prizes, partnerships, business development, and press opportunities to presenters.

VC firms represented on Future Energy panels include:

- Braemar Energy Ventures
- Earthrise Capital
- Shell International (lead sponsor of Future Energy)
- New Enterprise Associates
- Batelle Ventures
- Clean Energy Venture Group
- Black Coral Capital

- Terawatt Ventures
- RockPort Capital Partners
- SJF Ventures

Sectors of interest include:

- Conventional oil and gas technology (exploration, recovery, and extraction)
- Non-conventional oil and gas technology
- Alternative and renewable energy (solar, wind, hydrogen, biofuels, geothermal, etc.)
- Renewable and bio-based chemicals
- Mobility / smart mobility
- Energy efficiency / smart grid
- Energy finance and trading technologies

» More information and the application form can be found on the [Future Energy website](#).

» Applications to present at the next Future Energy event are due by [Friday, October 12](#).

» Please contact future.energy@ultralightstartups.com with any questions.

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[Sham Environmental Review in California, *MoneyBox*, 6.20.12](#)

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[The Maturation of the Green Building Industry, *UrbanLand*, 6.20.12](#)

[Serious Energy hit by spate of troubles, *San Francisco Chronicle*, 7.10.12](#)

[Greenwashing, Inc., *Slate*, 7.10.12](#)

[D.C. unveils plans for awesome new green neighborhood, *Grist*, 7.15.12](#)

[New San Francisco legislation will jump-start urban farming, *Grist*, 7.18.12](#)

[Why we pay double for solar in America \(but won't forever\), *Grist*, 7.15.12](#)

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Stricter LEED Could Hike Project Costs, Send Gov't Running, *Law360*, 6.26.12

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