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State and Local Governments Use Unique Ways To Promote Green Building Initiatives



Although many federal agencies have internally adopted and promoted green building initiatives, federal legislation either encouraging or mandating sustainable development has been notably absent from the green building discourse. Development of federal energy policy has been slow and often has been blocked by partisan politics. With a lack of federal leadership in the green building movement, state and local governments have taken up the front in introducing green building legislation and incentive programs that are likely to increasingly impact real estate managers, developers, and investors. This situation is a classic example of Supreme Court Justice Louis Brandeis's famous and oft-quoted dissent in *New State Ice Co. v. Liebmann*: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." This "laboratory of the states" approach has been the model since the beginning of the sustainable development movement, especially in individual municipalities. It is within the laws and the economic incentive programs of states, counties, and towns that the current landscape of green building standards and experiments has emerged.

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The concept itself is not new, but the sustainable or green development movement has been gathering steam over the past decade. The real estate industry has moved to the center of the debate over global climate change because buildings are responsible for half the greenhouse gas emissions worldwide. Green design is not merely an ideal but a developing science that seeks to counter the negative impact of human activities on the environment and to relate people to that environment. The major environmental principles of green design include the use of low-impact or recycled materials, energy-efficient processes and structures, products and projects with longer life cycles (with the need to be replaced less often), protection of ecosystems, reduction of waste, and improvement in air and water quality.

Green or sustainable development is a broad, holistic concept that also includes economic and social principles, such as reduction of operating costs, greater value and profit, increased productivity, enhanced occupant health and comfort, and minimized strain on local infrastructure. Though the environmental aspects of green design appeal independently to investors who value social responsibility, there is an increasing recognition among developers and investors that the economic benefit of green building is promising in and of itself. As the government adopts more green initiatives, green or sustainable development seems very likely to have an increasingly wider impact on real estate trends, government requirements, and returns on investment.

LEED Leads the Way

The United States Green Building Council (USGBC) is a nonprofit organization, with participation from every segment of the building industry, focused on the goal of energy efficiency and environmental responsibility. The



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USGBC began formulating its Leadership in Energy and Environmental Design (LEED) program in the early 1990s. LEED is a rating system designed to provide uniform standards by which to evaluate and certify green design. Originally, LEED rated only new construction; today, multiple LEED standards and categories are used for different building projects and different aspects of a building's life cycle. Projects are first registered with the USGBC, then are evaluated based on the appropriate LEED program. Each must earn a minimum amount of points under the LEED guidelines in order to be awarded Certified, Silver, Gold, or Platinum certification.

The LEED program has been remarkably successful and has become a de facto national standard for green building. Almost every city and state embarking on green initiatives has used LEED standards as its primary benchmark. The federal government, through the Department of Energy and several other agencies, encourages the use of LEED standards and actually mandates many of LEED's technical requirements for new government projects. The federal government also plays a role in funding green design research, although an April 2007 report from the USGBC's Research Committee called for an increase in federal funding for green research, finding that the \$193 million per year spent by the federal government was not proportionate to the level of impact that construction and development has on the environment and the economy.

Not every local government is yet encouraging sustainable projects, but the list of those that are doing so is impressive and growing every month. Each has taken its own unique stance on how exactly to advance environmentally responsible development, although certain similarities in types of programs, types of regulations, and standards for compliance are obvious. The most common government incentives for green building are tax credits, fast-track permitting, density bonuses, and government grants. Local governments have largely been successful in attracting green development through such programs. The vast majority of governments have adopted LEED standards as the benchmark for awarding the various incentives. Brandeis's laboratory approach, however, gives each adopting government room to localize and particularize LEED for the peculiarities of the region or city. Local governments are equally free to disregard LEED standards completely or to use them only as a guide in creating standards for what

green building means, as some California cities have done. Local governments are also free to truly experiment with the ever-evolving principles of green design.

A recent New Mexico bill would allow counties to designate areas as sustainable development testing sites, where various ideas and techniques relating to green development could be tested among actual residents. A proposed New York bill would require municipalities to consider alternative energy sources when constructing new municipal buildings. Tax incentives vary across states that have them in place. One unique proposal came up in Maryland, where it was proposed that tax credits earned through green building would be freely transferable to third parties. Some places, such as Washington's King County, offer competitive grants in order to drum up new creative ideas for sustainable projects. Cities such as Chicago, Scottsdale, and Gainesville, FL, offer fast-track building permits for projects that meet green standards. To balance this survey of local programs, however, Nevada contemplated a repeal of its green development tax incentives because of negative financial effects on state revenues. In the absence of federal legislation, local governments have a vast array of successes and some failures from which to learn or draw ideas. Ultimately, any future federal legislation will benefit from the experiences of those progressive cities and states that currently constitute the vanguard of the green building movement.

Carrots Work Better Than Sticks

Clearly the most common approach to encouraging green development has been to offer incentives rather than institute compulsory standards. A local government will mandate that its own buildings, or any buildings partially or fully funded by public monies, meet green standards but—with the exceptions noted below—few major jurisdictions have experimented with making LEED standards or other compliance for private projects mandatory. The “carrot,” or incentive, is still much more pervasive than the “stick,” or compulsory approach.

The city of Chicago, long a national leader in green development, is an example of a municipality that is employing a mixture of carrots and sticks. One of Chicago's major achievements has been its green roof program. A green roof incorporates plants on the top level of a structure and typically “consists of the following components: an insulation

layer, a waterproof membrane to protect the building from leaks, a root barrier to prevent roots from penetrating the waterproof membrane; a drainage layer, usually made of light-weight gravel, clay, or plastic; a geotextile or filter mat that allows water to soak through but prevents erosion of fine soil particles; a growing medium; plants; and, sometimes, a wind blanket,” according to the City of Chicago website. Chicago’s green roof program aims to improve air quality, conserve energy, reduce storm water runoff, and help reduce the urban “heat island” effect. The program is a mixture of incentive and compulsory approaches because if a developer applies for a discretionary approval, such as a mixed-use or commercial planned unit development, a green roof will be required, whereas for an existing building, an incentive is offered on a percentage formula. For example, to qualify for certain public assistance, such as tax increment financing, residential projects with fewer than four units must meet LEED certification, and “market rate” residential projects with more than four units must have a 50% green roof and a LEED or similar certification.

Cities Promote Green Standards

A few smaller cities in California were the first to make compliance with green standards compulsory for private projects, but in mid-2006, Santa Fe established itself as a leader by being the first city to adopt the U.S. Conference of Mayors’ 2030 Challenge, a commitment to gradually achieve “carbon neutral” buildings by that year. Just last winter, two major East Coast cities put compulsory green standards for private development in place. Washington, DC, and Boston have become the leaders in advocating the stick approach over the carrot. The D.C. ordinance phases in its mandatory LEED standards for new projects, even projects receiving no public assistance, that are more than 50,000 square feet by the year 2012. D.C. also proposes creating a new incentive program to encourage early adoption of green standards for new projects in the interim.

Boston, unlike Santa Fe and D.C., has made its mandatory standards effective immediately. Boston’s new compulsory building codes are also directed at similar large projects, but Boston does not require actual LEED certification. Instead, it requires new projects to be LEED “certifiable.” This reflects the fact that under the new code, a project can take up to four of the necessary points from unique “Boston green building credits.” The available credits unique to Boston’s

building code include historic site preservation, groundwater recharge, and incentives for building occupants to utilize public transportation. These additional available credits have essentially localized and customized LEED standards for the unique conditions in Boston, a particularly apropos example of the Brandeisian “laboratory of the states,” given it was the justice’s hometown. San Francisco and other California cities are actively considering following the lead of Boston, DC, and the smaller cities that require privately funded projects to meet mandatory standards. Investors should be aware of this trend and pay close attention to how these new compulsory requirements may shape development projects and affect future returns on projects.

Green Buildings See Greenbacks

In addition to government incentives, green buildings receive potential long-term savings in energy, life-cycle maintenance, and capital costs that benefit a green building. Energy efficiency and other green features carry the promise of materially reducing the long-term costs of heating, cooling, lighting, plumbing, and maintaining a project. Corporations and real estate developers are gradually recognizing the mutually reinforcing merits of reducing the impact of buildings on the environment, improving the health and productivity of the workforce, and increasing their ultimate returns on properties with only a modest increase in initial capital costs. Green buildings not only may have lower operating costs but also can achieve rent premiums; further, the longer life cycle of a green building promises greater returns over the life of the building. A number of substantial investors, including California Public Employees’ Retirement System, the largest pension fund in North America, have already embarked on “responsible property investing,” a movement that demonstrates success in generating market rates of returns on socially and environmentally sound projects.

Regardless of the prospects for future federal legislation, individual states and localities will continue to compete for green development projects and strive toward sustainable goals. This competition will arguably drive investment strategies and advance the green building movement itself. With the convergence of market and political forces, environmentally sensitive design regulation and legislation are very likely to continue to affect the real estate development industry. ■