

## Problems with LEED Standards in City and State Building Codes

The U.S. Green Building Council's "Leadership in Energy and Environmental Design" (LEED) certification process has become the gold standard of sustainability for many types of commercial and residential development. LEED certification is based upon specific levels of achievement in sustainable design and construction. The lowest LEED level is "certified" and the levels increase from "silver" to "gold" to "platinum." Successfully reaching a given LEED certification level requires a subject property to score specific point totals (which differ among building types). There is a "menu" of potential points available for various practices, which range from installing bike racks on site to documenting the source of the iron ore used in any steel used in construction. Even when a construction project does not choose to seek LEED certification, it may benefit from studying the guidelines and identifying sustainable practices that were not otherwise being utilized.

However, although the impulse is well intended, there are several potential problems with adopting LEED certification as a building code requirement.

1. If local building codes adopt LEED certification standards by reference only, the public codes will be subject to change by every decision of the private U.S. Green Building Council (USGBC). Even representatives of the USGBC itself have argued against imposing LEED certification through building codes.

approximately \$50,000 to the development of a small retail project. This additional expense does not cover all increases including those associated with design, material or equipment changes driven by the LEED guidelines. In addition, adopting LEED certification as part of a municipal building code effectively gives a monopoly to LEED AP certified examiners.
2. LEED was intended to be a "cutting edge" standard. It was never intended as a base-line requirement or as a prerequisite for a permit. LEED was intended to "push the envelope" and highlight the best of the best. Building codes are properly intended to establish a minimum standard for safety and other purposes. It is unclear how compatible these two goals can be in the long run.
3. LEED requirements can be in conflict with building codes in critical code categories. Institutions that mandate sustainability requirements often are unaware of the unintended consequences and impacts to the design and development process, and the resulting increases in time for approval and overall project costs.
4. Final LEED Certification is granted only after the subject building's construction has been completed or even after the building's mechanical systems have been operated for some period. Exactly what should happen if the building is not ultimately certified at the mandated level is unclear. Some agencies are requiring up to a \$2 million bond as a Certification Compliance Guarantee. There is no clear appeal process for disputes regarding final certification approval except through the USGBC itself.
5. Although USGBC does not charge directly for its certification standards (beyond a registration fee), the lengthy process can be an expensive one for developers. USGBC trains and licenses third party certification experts who do charge for their services. Although costs can vary greatly, achieving LEED certification can add
6. In recent years, the USGBC has intensely advertised programs of building and site certification despite having only a limited capacity to handle the resulting demand. More than 14,000 projects have been registered yet only about 1,700 have been processed (certified) to date. The Certification process is now seriously overloaded and USGBC is having difficulty handling the demand even as it continues to change the rules for new projects. Because the USGBC has insufficient staff resources for the influx of new certification requests, most requests are handled by other third-party consulting firms - and their individual decisions to accept or reject various sustainable designs are effectively final. As demand increases, the USGBC process could collapse under the weight of its own success with no foreseeable agency to replace it or maintain the process.
7. LEED standards do not apply directly to all types of construction. For example, the LEED certification standards for retail buildings are only now moving beyond the pilot phase (2008). And multiple site, "portfolio" certification (which can greatly reduce the per-unit cost of certification for national chains) have yet to be approved.
8. The entire LEED certification process is undergoing significant changes for 2009. This is partially in response to the relatively poor performance of LEED certified buildings in terms of energy efficiency. But it also demonstrates that LEED certification is a moving target that can greatly complicate compliance efforts.