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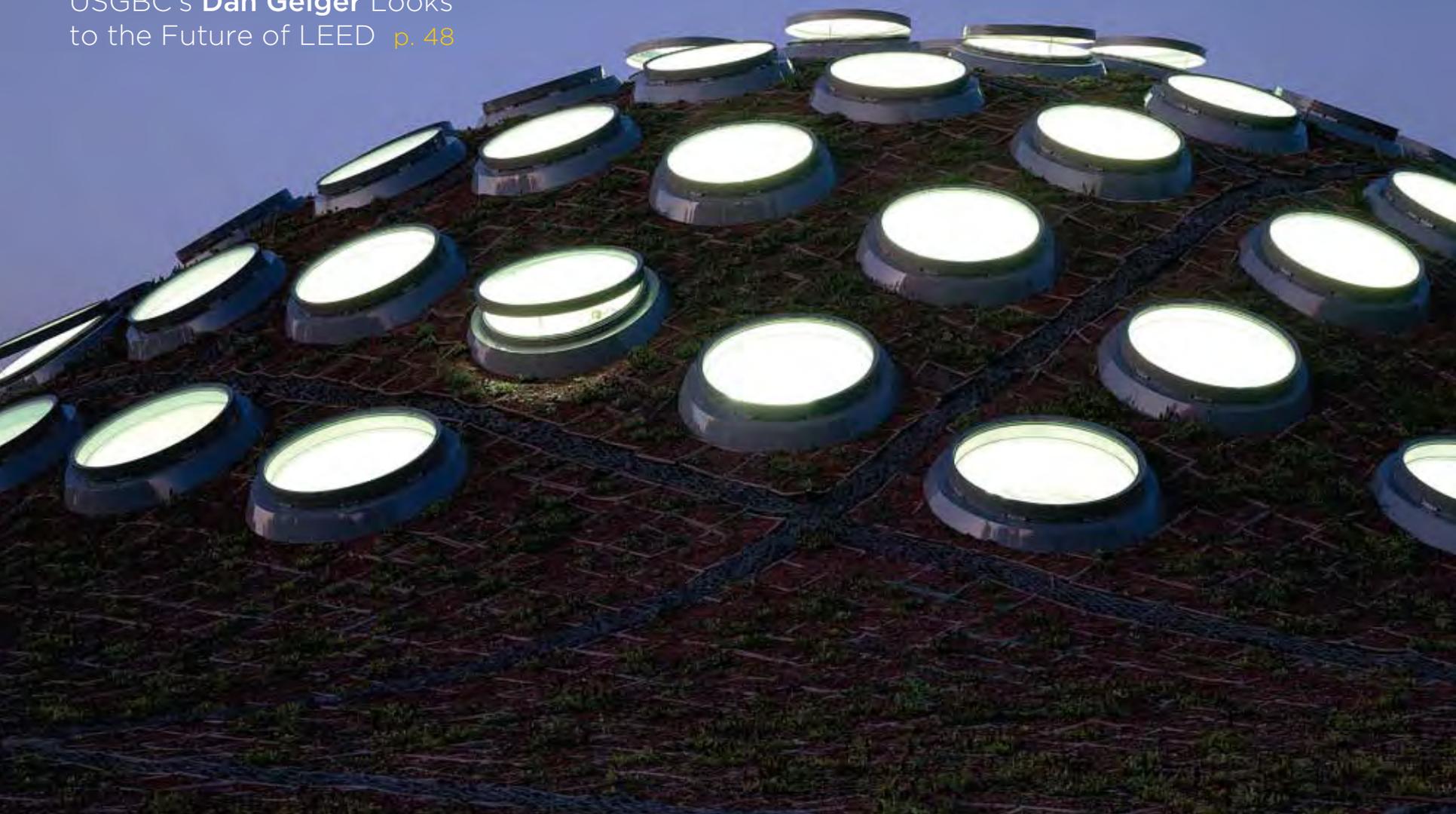
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# San Francisco's Green Building Ordinance: All That Glitters...

Reviewing the true impact of the City's green initiative.

By **David C. Longinotti**



The City of San Francisco is rightfully proud of its new Green Building Ordinance, which is touted as the toughest command and control Green Building Ordinance in the United States. After all, by 2012 the ordinance is projected to reduce CO2 emissions by 60,000 tons, reduce energy consumption by 220,000 megawatts and reduce potable water use by 100 million gallons. The ordinance will work by imposing Leadership in Energy and Environmental Design (LEED) or Build it Green's GreenPoint (GPR) construction standards on a broad array of commercial and residential projects, including a LEED Gold Standard on new high-rise towers. But imposition of these requirements will come at an estimated annual cost to the city's economy between \$30 million and \$700 million, as some developers decide to build elsewhere. These projections clarify that whether the ordinance can achieve its aim and minimize economic loss will depend on its ability to spur or impede new development. Yet a detailed review of the ordinance reveals that it offers many hurdles to developers and few enticements. And in the case of new high-rise towers involving building demolitions, all that glitters may be Platinum.

**Legislative History** The ordinance is an amalgam of two competing green building ordinances offered by Supervisor and Board President Aaron Peskin and Mayor Gavin Newsom, with significant historic preservation protections cobbled in at the last minute. Peskin's version would have required new commercial construction and exterior renovation projects exceeding 20,000 square feet to meet the LEED Gold Standards and would have taken effect immediately. Newsom's version provided for a five year phased application of LEED and GPR benchmarks to a wider range of projects, including residential developments. The mayor's version eventually prevailed, but only after rigorous safeguards promoting renovation and deterring building demolitions were included at the insistence of Peskin. The Board of Supervisors passed the resulting ordinance in July 2008, and the mayor has since signed it. The ordinance now awaits a final approval by the California Energy Commission prior to its effective date, which is scheduled for Oct. 1, 2008.

**LEED and GPR** The ordinance is the latest in a small but growing trend of green building ordinances nationwide to adopt the LEED construction standards developed by the nonprofit US Green Building Council (USGBC), which acts as a certifying body. USGBC assures that projects meet specified prerequisites and awards points for adherence to certain requirements in the areas of site selection, water efficiency, energy efficiency and atmosphere, materials and resources, indoor air quality and innovative design. There are four levels of LEED certification based on points achieved: LEED (26-32 points), Silver (33-38 points), Gold (39-51 points) and Platinum (52-69 points). These point totals are particu-

larly important to understanding how the ordinance operates. GPR is an equivalent standard developed by Build it Green, a Bay Area-based green building advocate group, and it is intended for residential developments. **Phased LEED Requirements** At its core, the ordinance phases in various levels of LEED and GPR required building standards to the following categories of projects over the next four years: New Large Commercial, Mid-size Commercial, Large Commercial Interiors and Major Alterations, High-rise Residential, Mid-size Residential and Small Residential. The broad scope of the ordinance is expected to impact approximately 57 percent of San Francisco's \$1.9 billion construction industry. Significantly, though, laboratory development projects are expressly excluded from the scope of the ordinance, providing needed protection to the city's burgeoning biotech industry. The following table summarizes these phased requirements:

In certain respects, crafters of the ordinance have engineered requirements above LEED certification levels to foster certain environmental policy goals. As a condition to receive building permits, applicants are required to demonstrate that they have achieved specified LEED points, such as water use reduction and on site energy generation. Achievement of particular points is not required by LEED. Applicants are subject to significant increases in the number of LEED points they will need to achieve before obtaining a building permit if their project involves a demolition, as detailed below. The ordinance also fabricates up to 24 LEED-type points as an incentive for applicants to reuse materials in historic structure renovations.

These variations, though well intended, undermine the inherent flexibility built into the LEED certification system that allows developers discretion to choose which LEED points to achieve given the specific constraints of their project. In some instances, the ordinance's requirements are just not very well thought out in the overall context of LEED certification requirements. For example, the material reuse points available in historic renovations are substantially overweight in the context of LEED. Up to 24 of these points are available. By contrast, LEED awards a single point for reuse of building materials and awards no points specifically for reuse of materials from historic structures.

**Demolition** The ordinance adopts a pronounced renovate-don't-demolish policy and includes significantly heightened permit approval requirements for projects involving a building demolition. For projects required to be LEED certified (e.g., commercial and residential high-rise towers), a permit applicant must score an additional 6.9 points to obtain a building permit regardless of whether the demolished building was of historical significance. This effectively increases the minimum LEED Gold certifica-

Building/Project Type	Effective Dates & Requirements
<b>New Large Commercial (Group B or M)</b>	As of effective date: LEED Certified 1/1/2009: LEED Silver 1/1/2012: LEED Gold; proof of renewable on-site energy or purchase of green energy credits
<b>Mid-size Commercial (Group B or M)</b>	As of effective date: LEED Checklist (no certification) 1/1/2009: Specified LEED requirements 1/1/2011: Additional LEED requirements 1/1/2012: Additional LEED requirements
<b>New Large Commercial Interiors (Group B or M) and Major Alterations (Group B, M, or R occupancies at least 25,000 square feet)</b>	As of effective date: LEED Certified 1/1/2009: LEED Silver 1/1/2012: LEED Gold
<b>High-rise Residential (Group R)</b>	As of effective date: LEED Certified 1/1/2010 and thereafter: LEED Silver or, as of the effective date: 50 Green Points as of 1/1/2009: 75 Green Points
<b>Mid-size Residential (Group R)</b>	As of effective date: GreenPoints Checklist (no point goal) 1/1/2009: 25 GreenPoints 1/1/2010: 50 GreenPoints 1/1/2012: 75 GreenPoints
<b>Small Residential (Group R)</b>	Same as Mid-size Residential
<b>Laboratories of any Size</b>	Excluded from Ordinance

tion standard from 39 to 46 points. If a project involves demolition of a building without historical significance, and residential and/or commercial occupant loads of the replacement structure triple when compared to prior loads, an additional 5.5 points are required. This results in a minimum LEED Gold certification requirement of 51.5 points. Since there are no partial points in LEED that rounds up to 52 points, which makes the requirement LEED Platinum status. When residential and commercial occupant loads quadruple in this situation, a smaller increase of 4.14 points is required resulting in a LEED point score requirement of 51, just one point less than the LEED Platinum requirement. For a high-rise residential tower seeking LEED Silver certification, the resulting minimum point requirement is 46, well into the LEED Gold Standard. For some reason, there are no corresponding point surcharges for increased occupant loads when the demolition of an historical resource is involved. For projects that are not required to be LEED certified, such as mid-sized commercial buildings, the timeframe for attainment of specified LEED criteria is accelerated typically by one year.

These historic resource protection provisions are most likely to impede new construction projects on a going-forward basis. They can result in an increase as much as eighteen percent in the number of LEED points required to obtain a building permit in a given situation. By contrast, there are no comparable point surcharge provisions in the LEED certification program. Like the changes to LEED certification requirements discussed above, the provisions will impede the ability of developers to plan and implement compliant projects and in some instances could render a project infeasible. As drafted, the provisions do not do their job well. They

provide less protection to historical resources than non-historical ones. In particular, the provisions lead to the anomalous result that a commercial high-rise project involving demolition of a building that is a historical resource would have to achieve fewer points than a similar project involving the demolition of a building without any historic significance.

**Maintenance** The ordinance diverges from LEED certification standards by requiring the green building features of any structure subject to the ordinance to be maintained indefinitely, regardless of subsequent alterations, additional or changes of use. By contrast, LEED is a point in time certification; currently there is no ongoing maintenance requirement other than one or two verification obligations that last for no more than a year or two. The term green building features is not defined in the ordinance, and no maintenance standards are given, but if, for example, the ordinance is construed to require ongoing satisfaction of the technical performance criteria in LEED's Energy and Atmosphere and Indoor Air Quality standards, significant ongoing capital and maintenance costs could be involved. Depending on how this maintenance requirement is construed, it is apt to set off a debate between landlords and tenants about who should bear the ongoing cost of compliance. In terms of assuring that existing buildings are operated and managed in an environmentally efficient way, the city missed its opportunity, at least for now, to require building owners to operate green buildings to LEED Existing Building Standards. ■

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