

## *CALGreen Building Standards Code: Marketing and Reality*

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In January of this year, the California Building Standards Commission released its 2010 Draft California Green Building Standards Code (“CALGreen”) set to take effect January 1, 2011. This new name for Part 11 of the California Building Standards Code represents one branch of a multifaceted marketing campaign—the State has issued a series of press releases and position statements, is publishing a dedicated magazine, and is offering educational workshops—aimed at promoting California as a leader in green building code standards. While the State has touted CALGreen as exemplifying environmental leadership, private building-certification organizations have criticized the new code, citing a lack of substantive measures and the State’s apparent unwillingness to work in conjunction with model green building codes. This has led to some confusion: does CALGreen represent fundamental change in state building standards or is it simply a marketing effort? Moreover, how does CALGreen interact with private building certification systems such as LEED and Build It Green?

This client alert addresses these questions, provides a summary of some of the noteworthy provisions in CALGreen, and discusses the effect CALGreen may have on the promulgation of future green building codes. In brief, CALGreen represents a modest change in California’s green building standards. Certain changes in the code may lead to marginally higher compliance costs for California developers, and cities and counties seeking to green their local codes beyond the mandatory provisions of CALGreen will need to navigate compliance with the new standards. Nonetheless, CALGreen is a set of mostly voluntary provisions, and its mandatory standards require only incremental change. Whether this incremental approach will be enough to garner California a leadership stake in the promulgation of future green building standards is addressed at the end of the alert.

### **Structure and Evolution of the Code**

CALGreen is the new moniker for Part 11 of Title 24 (California Building Standards Code) of the California Code of Regulations. Like previous iterations, CALGreen is split between residential and nonresidential uses. It is further divided among specific building types and among the four state agencies – Building Standards Commission, Department of Housing and Community Development, Division of the State Architect, and Office of Statewide Health Planning and Development – that carry specific authority over certain building standards. For example, a developer seeking to build a new community college building would come under the statutory authority of the Building Standards Commission. If that community college building were to be built on an existing campus, however, the project would also be subject to the statutory power of the Division of the State Architect. Similar divisions of jurisdiction are made for other types of buildings.

Within each building classification, CALGreen establishes a set of mandatory provisions and two separate sets of voluntary code provisions. The sets of voluntary measures are referred to as

CALGreen Tier 1 and CALGreen Tier 2. Municipalities are required to adopt the mandatory provisions but can also choose to incorporate the voluntary measures as part of the local building standards. Since the voluntary measures are more stringent than the regular code, however, cities and counties may be required to file a finding of need statement with the Building Standards Code in order to locally adopt the voluntary measures as mandatory. For developers, simple compliance with the mandatory building code will be enough to label their buildings as “**CALGreen certified**,” a decorative way of stating that the building is compliant with Part 11 of the California Building Standards Code. A developer that met the voluntary Tier 1 and Tier 2 standards could similarly market a building as “**CALGreen Tier 1 certified**” or “**CALGreen Tier 2 certified**.” California has not released a plan to provide plaques or other building accoutrements announcing CALGreen certification, in contrast to the plaques and badges provided by some private certification systems such as LEED.

According to conversations with members of the California Building Standards Commission, CALGreen is designed to gradually add environmentally-friendly measures in subsequent iterations. In this respect, the voluntary Tier 1 and Tier 2 measures of the 2011 code are worth noting as potential harbingers of mandatory standards to come. This transition from voluntary-to-mandatory is reflected in the code changes from 2008 to 2011, as voluntary measures from the 2008 code make up more than a quarter of the mandatory measures in the 2011 code.

### Sample of Significant Mandatory Code Provisions

- Indoor potable water use shall be reduced by at least 20% from current code standards (effective as of July 1, 2011).
  - **Comment:** The reduction of indoor potable water is primarily focused on equipment requisitioning rather than building design, as this standard requires more stringent flow rates for showerheads, toilets, and faucets. Consumption of process water is not affected.
- Installation of separate submeters will be required to monitor indoor and outdoor water use in nonresidential buildings.
  - **Comment:** This standard is applicable to buildings equal to or greater than 50,000 square feet, any building or space projected to consume more than 1,000 gallons per day, or for landscaped areas between 1,000 and 5,000 square feet.
- Divert to recycle or salvage a minimum of 50% of nonhazardous construction waste and demolition debris generated at the site.
  - **Comment:** This is a modest change from existing county and city recycling laws; commentators have opined that the Tier 1 standard of 65% diversion is achievable in most areas of California.
- VOC emission limits on finish materials and resilient flooring systems.
  - **Comment:** Similar to the indoor potable water limits, the VOC limits target the requisitioning phase of construction by requiring a change in the mix of accepted building materials.
- Commissioning for new buildings 10,000 square feet and over (nonresidential).
  - **Comment:** Commissioning is the process of modeling, testing, and adjusting building design, construction, and operation systems to ensure all components perform according to the developer’s specifications. Use of commissioning is quickly being

established as a best practice in new and existing buildings. Studies indicate that investments in commissioning for new commercial buildings are, on average, returned in six to eighteen months.

- Permanently anchored bicycle racks within 200 feet of the visitors entrance (nonresidential).
  - **Comment:** This standard requires bike racks equal to 5% of visitor motorized vehicle parking capacity, with a minimum of one two-bike capacity rack. By contrast, the Tier 1 and Tier 2 standards available for adoption by local jurisdictions require changing and shower facilities for buildings with over 10 occupants, or documentation showing arrangements with nearby facilities, *e.g.*, gyms.
- Designated parking for any combination of low-emitting, fuel-efficient, and carpool/van pool vehicles.
  - **Comment:** The Code contains a table indicating the number of spaces that must carry this “green-vehicle” designation, *e.g.*, zero spaces for up to 9 total parking spaces, and 8% of total spaces for over 201 total parking spaces. Tier 1 Certification requires 10% of total spaces to carry this designation; Tier 2 Certification requires 12% of total spaces.
- Zero direct-beam illumination from the building site (non-residential).
  - **Comment:** Light pollution standards are becoming more stringent as the adverse species impacts of uncontrolled artificial light become more widely understood and accepted.

### **CALGreen in Context: Relation to Private Green Building Certifications**

The Executive Director of the Building Standards Commission has noted that “green building rating systems and programs are both distinct and complementary to CALGreen.” What that means is that there is very limited overlap between the CALGreen standards and the certification requirements of private rating systems such as LEED or Build It Green. Section 101.3.1 of CALGreen explicitly states that “it is not the intent that this code substitute or be identified as meeting the certification requirements of any green building program.” In short, CALGreen does very little to prepare a building for private certification.

The primary reason CALGreen does not prepare buildings for private certification is not because of disagreement about objectives or needs but rather because of process: CALGreen’s less aggressive goals reflect the political compromise inherent in a public code. Private certification programs such as LEED also reflect competing constituencies but their differences are far less pronounced than those in the public sphere. Ironically, CALGreen may hold the potential for greater impact on green building as its standards are mandatory and compliance is ensured by actual on-the-ground inspections, as opposed to paper inspections under some private certification programs. These fundamental differences provide for interesting contrasts between the private and public systems. The LEED rating system, for example, requires aggressive reductions in building energy consumption in order to achieve certification, while CALGreen contains no independent energy reduction measures at all. Instead, the standards set by the California Energy Commission in Part 6 of Title 24 are incorporated by reference into CALGreen. This circumstance reflects the competing interagency jurisdiction present in the California building standards code.

CALGreen also differs from LEED in the certification process itself. Obtaining LEED certification requires the filing of various registration and application documents with the Green Building

Certification Institute, as well as payment of associated fees. In addition, most developers employ consultants to ensure the project achieves the desired LEED certification, sometimes at significant expense. CALGreen, by contrast, does not require additional paperwork beyond the standard building permits and applications – there are no additional fees or development costs associated with obtaining CALGreen certification. Whether branding a particular building as “CALGreen certified” actually creates value for developers remains to be seen.

## Conclusion

While CALGreen does not represent a large scale shift in building practices, it does begin a process of incremental change for building standards in California. CALGreen does raise certain construction standards, although the changes are relatively inexpensive. Private ratings systems such as LEED have, in the past, succeeded due to a combination of savvy marketing and quantifiable improvements in environmental and financial performance. Whether CALGreen provides California with a leadership stake in future green building codes may depend in large part on the value that becomes associated with CALGreen certification. The financial cost of such certification appears minimal; the question is whether its value will be any greater.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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