

Green Building Legal Issues

Green development projects are always subject to the same concerns as other real estate projects. Concerns such as site development, zoning, regulatory requirements, permits, design and construction contracts, risk management and financing, among others do not magically disappear because your project is going “Green”. In addition, green development projects have some unique risk management issues. There is, however, the potential for public and private tax credits as well as private financial incentives which can make green projects worth the extra effort. Therefore, prior to undertaking a green development project the following items must be considered:

- (1) Undertake a thorough review of the specific certification programs available. This should be performed prior to site selection. Many certification programs allocate points on decisions made before the project site is selected and certain credits are attainable based upon the choice of location. In addition, most certification programs require early registration and documentation.
- (2) Look at private entities providing financial incentives. Certain insurance companies, banking institutions and the like offer discounted pricing and programs for building owners who commit to green standards.
- (3) Negotiate and draft contracts reflecting each project’s stakeholder’s role in earning the desired level of certification and allocate that responsibility.
- (4) Evaluate risk which includes not only those risks associated with traditional construction projects such as construction or design defects in the structural integrity of the building or delays in the schedule caused by change orders or poor scheduling, but also the unique risks associated with building green. For the owner, these risks include losing the project certification and its tax incentives or increased soft costs without a corresponding increase in value. For the contractor, it can include not having the building perform as efficiently as warranted or the failure to deliver on contractual obligations such as certification. Lastly design professionals are at risk for a potential increased standard of care.

These are just some of the considerations when undertaking a green building project. Considering the legal issues should not be perceived as an impediment to green building, but rather a way to manage risk and ensure a smooth development process. Attorneys at Koeller, Nebeker, Carlson & Haluck, LLP have been working with owners, developers and builders for over 20 years in Arizona, California and Nevada and can work with you to mitigate your exposure.