



DATE: May 13, 2015
TO: Board of Commissioners
FROM: Patrick Quinton, Executive Director
SUBJECT: Report Number 15-29
Adopting Revisions to the Portland Development Commission Green Building Policy

BOARD ACTION REQUESTED

Adopt Resolution No. 7113

ACTION DESCRIPTION

This action by the Portland Development Commission (PDC) Board of Commissioners (Board) will formally adopt an update to PDC's Green Building Policy (Policy). The Policy sets a standard for the quality of construction with regard to environmental performance for certain PDC projects. Generally, the Policy is applicable to construction projects on real estate sold by PDC or other construction projects that receive substantial PDC financial support. The PDC Board adopted the original Policy in 2001 and amended it in 2005 and 2010 to create additional flexibility for small- and medium-size projects, including the addition of the Earth Advantage Small Commercial rating system.

The current proposed changes to the Policy include a lower investment threshold; the addition of PDC-owned and leased buildings and parking structures to be covered; an increase in certification level from Leadership in Energy and Environmental Design (LEED) Silver to LEED and Earth Advantage Gold; a decrease in square footage in both new construction/renovation and tenant improvement project types; and process improvements in the administrative procedures (a draft can be found in Attachment A).

BACKGROUND AND CONTEXT

For decades, the city of Portland has been recognized as an international leader in sustainability and green building through conservation, green design, and construction principles that guide land use planning and urban development. In particular, over the last 15 years, there has been a significant market shift and understanding that green building practices mitigate harmful impacts of the construction and operation of buildings, create environmental and social benefits, and improve community health. Portland's focus and dedication to green development has also created an economic competitive advantage for the local design and construction sector and PDC has led the effort to market this expertise through the We Build Green Cities initiative.

In 2001, the City of Portland (City) was the first in the United States to implement a green building policy for the construction and renovation of City facilities. To support the intent of the City's green building policy, the PDC Board adopted the Policy later that year through Resolution No. 5812, advocating for and incorporating sustainable building practices in construction projects as a condition of receiving financial assistance. The PDC Board approved amendments to the Policy in 2005 and 2010 to maintain alignment with the City as it updated its own policy to stay current with market trends and support

implementation. Together, these policies helped drive a private market for green construction. The collective effort has resulted in approximately 500 buildings that are in the process of or have achieved LEED certification developed by the United States Green Building Council (<http://www.usgbc.org/>) throughout Portland.

The supply of green buildings continues to grow, matching the demand for a more sustainable building product in Portland. As a result, the expertise in strategies for green design, construction, and operation has deepened. In order to remain at the forefront of green building leadership at both the local and national levels, the Portland City Council (City Council) approved changes to the City policy on Earth Day, April 22, 2015, to reflect the market direction and capture greater environmental, economic, and social benefits from the investment, construction and renovation, and occupation of City facilities. Updates include: addition of two building certifications (Earth Advantage and Living Building Challenge); solidified language on ecoroofs with an exemption for buildings less than 500 square feet; clarified language on best practices for historic resources and construction waste management; additional parameters around parking; and new Salmon Safe Certifications and bird-friendly design guidelines.

PDC ran a parallel process in updating its Policy to remain in step with the City. PDC's update mirrors that of the City by increasing the certification level to LEED Gold and Earth Advantage Gold for new construction and major renovations, while maintaining LEED-Silver for tenant improvements with substantial mechanical, electrical, and plumbing modifications. PDC is now on par with the City by specifically applying the Policy to PDC-owned and leased properties. PDC will connect contractors to trainings (such as Earth Advantage) for continued learning and skill development that will enable them to deliver certification programs.

COMMUNITY AND PUBLIC BENEFIT

The Policy promotes sustainable design and construction practices to yield long-term public savings in both natural and financial resources as the result of effectively managing energy, water, waste, and materials. Communities will benefit from newly-constructed or renovated buildings that enhance the user experience through increased comfort, resource efficiencies, and healthy habits that come with this approach.

PUBLIC PARTICIPATION AND FEEDBACK

PDC participated in a cross-bureau working group to update the City's green building policy and used the opportunity to guide updates to the PDC Policy. PDC consulted with and incorporated feedback from public sector colleagues, non-profit partners, and members of private industry into the updated Policy. Overall feedback was positive. More specifically, partners supported the building size threshold, the corresponding building performance requirement, the Good Faith clause, the revised investment level, and the flexibility for project owners to select which rating system to pursue.

The City presented its revised policy in an open, public forum at City Council on April 22, 2015, where members of the public and government sectors were provided the opportunity for public comment on the policy. City staff noted PDC would be shortly following with its own update.

BUDGET AND FINANCIAL INFORMATION

There are no anticipated budget impacts as a result of the proposed updates; the Policy aims to provide a flexible framework to adapt to the differing natures and sizes of projects.

RISK ASSESSMENT

There are no immediate risks associated with the PDC Board adopting the updated Policy.

ALTERNATIVE ACTIONS

The PDC Board could elect to adopt only a portion or none of the proposed recommendations, thereby continuing to use the existing version as the operating document. By doing so, it risks falling out of alignment with the City’s policy.

ATTACHMENTS

- A. PDC Administrative Procedures: Green Buildings

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

REPORT NO. 15-29

ATTACHMENT A

**ADOPTING REVISIONS TO THE PORTLAND DEVELOPMENT
COMMISSION GREEN BUILDING POLICY**

Attachment A includes this cover page and contains eight pages:

- PDC Administrative Procedures: Green Buildings

Administrative Procedures

| | | | |
|--------------------------|-------------------------------------|-------------|-------------|
| Subject: | Green Buildings | References: | BP-3035 |
| Effective Date: | June 13, 2015 | Page: | Page 1 of 4 |
| Approved By: | _____ | | |
| | Patrick Quinton, Executive Director | | |
| Policy Sponsor: | Executive Director | | |
| Procedures Owner: | Deputy Director | | |

These procedures implement PDC's policy on **Green Buildings** (the "Policy") and describe the steps PDC staff will take to ensure compliance.

The Policy and procedures apply to three transaction types:

1. Projects receiving financial assistance;
2. Market rate transactions for real property dispositions; and
3. PDC owned and leased real property at time of lease agreement.

The procedures are intended to be transparent process rooted in clear communication and accurate information for internal compliance, creating the highest and best chance for success by the borrower, lessee, buyer or the agency itself. PDC staff must comply with the following procedures.

A. Financial Assistance (Loans and grants totaling \$200,000)

1. Project Intake

- a. PDC Real Estate and Lending (REL) staff managing a financial transaction will determine if the Policy is triggered based on Section 2.0 Applicability of the Policy. Best practice (and per the [Lending Team Process Manual for Lending Officers](#)) is to make the borrower aware of the Policy and that it could be triggered (if not already) should the project scope and/or financial assistance amount is increased.
 - i. REL staff and the RM will communicate with each other regularly to keep each other informed of the project and its current status.
 - ii. REL staff will periodically review the loan circumstance to confirm that an increase in loan amount has not triggered the Policy.
- b. In the instance where it is clear that the Policy applies to a particular transaction, REL staff will inform the borrower and discuss which certification type should be obtained using section 3.0 Policy Requirements of the Policy.
- c. REL staff will recommend the borrower should consult an architect accredited to deliver the certification or an agent of that certification body to confirm the requirements and next steps for compliance. The borrower or REL staff may also consult with PDC's clean tech relationship manager to identify a firm that provides this service.

- d. If there is uncertainty as to whether the project can achieve the required certification, REL staff should notify the RM and pursue the following path:
 - i. Require the project architect or select an architecture firm from PDC's flexible services contract list that has accredited staff, to perform an audit of the certification system against the project scope to determine the likelihood of success for complying with the Policy. Payment for consultation with a flex services firm will need to be resolved between the borrower and PDC.
 - ii. If the architect indicates that certification is not possible due to unique construction or reconstruction circumstances or the costs would overburden and threaten feasibility of the project, the borrower will be required to seek an exemption. (Further information can be found in Section 5 E. Policy Exemptions.)
- e. If it is determined that green certification is both applicable under the Policy and feasible, the borrower must immediately register for the certification, provide registration confirmation to REL staff, and develop the project in accordance with the determined green certification type.

2. Financial Investment Committee (FIC)

- a. REL staff and the RM will attend FIC to present the project. REL staff will indicate whether or not the Policy applies on the loan cover sheet and provide the following information based on the circumstance:
 - If it applies, which certification type will be pursued;
 - If it applies, and an exemption is being pursued, summarize the circumstance (described in Section 5 (E) Policy Exemptions) and next steps in coordination with the RM; or
 - If it does not apply, use Section 2. Applicability in the Policy to explain in detail why the Policy does not apply.

3. Compliance

a. Good Faith Deposit

- i. In all financial assistance agreements where compliance with the Policy is required, the borrower will be required to provide PDC with a deposit in the amount of \$10,000 and in the form of either a cashier's check or promissory note, as determined by PDC staff, as security that the borrower will make a good faith effort to comply with this policy ("Good Faith Deposit").
 - i. The Good Faith Deposit will be returned to the borrower if and when PDC staff has determined the borrower has complied with the Policy.
 - ii. The Good Faith Deposit will be forfeited to PDC if the borrower is (a) determined by PDC staff to be out of compliance with this policy and (b) if the borrower has been notified of this determination and given a reasonable amount of time (as determined solely by PDC) to comply with the Policy.
- b. **Progress Reports.** The borrower shall submit checklists for LEED or Earth Advantage or a list from the TI Guide and a brief written summary at the time of loan disbursement requests. If the project status has not changed between disbursements, the borrower and

PDC staff may agree that a progress report is not necessary at that interval. The written summary will include an update on the project and address:

- i. Progress toward meeting the Policy requirements;
 - ii. The likelihood that Policy requirements will be met or exceeded; and
 - iii. Any issues or circumstances that may prevent the borrower from meeting the requirements of the Policy.
- c. **Final Report.** Within five (5) business days of receiving notification of LEED or Earth Advantage certification approval or denial, the borrower shall notify and submit to PDC staff evidence of LEED or Earth Advantage Certification approval or denial.
- d. **Construction Manager.** In the event that REL staff retains a construction manager to monitor the project on behalf of PDC, tracking and ensuring compliance with this Policy must be a part of the construction manager's contract scope.
- e. **Determination of Policy Compliance**
 - i. If the required certification is approved, the borrower will be considered "compliant" with the Policy and PDC staff will return the Good Faith Deposit to the borrower.
 - ii. If the required certification is denied, the borrower will be considered "non-compliant" with this Policy and will forfeit the Good Faith Deposit.
- f. **Waiver Request for Non-Compliance**
 - i. **Request for Waiver.** If project certification is denied by LEED or Earth Advantage, the borrower may, within 10 (ten) business days of receiving the notice, submit a written request to PDC Staff to waive the requirements of the Policy. The request must contain the following:
 1. Final LEED or Earth Advantage certification application, documentation, and ruling from the certification body;
 2. An explanation of the efforts and accomplishments made by the borrower to achieve compliance with this policy as described in Section 5.1 of this policy; and
 3. An explanation for not achieving the certification.
 - ii. **Determination.** The PDC Executive Director will make a determination on waiver within 30 (thirty) days of receiving the borrower's request. PDC Staff will make a recommendation to the PDC Executive Director based the borrower's performance under Section 4 Compliance of this document.

4. Policy Exemptions

- a. **Exemption Authority.** Only the PDC Board is authorized to approve exemptions to the policy.
- b. **Conditions for Exemption.** A borrower may seek an exemption from the Policy if they can demonstrate one of the following conditions:
 - i. Compliance would burden the project with extraordinary costs threatening the project's economic feasibility; or

- ii. The unique construction or reconstruction circumstances of the project make building certification infeasible.

c. **Process.**

- i. **Submit Written Request.** The borrower must submit a written request to PDC, citing one or both of the Conditions for Exemption described above, a rationale for that condition(s), and supporting documents. The request will be reviewed by PDC staff and the Executive Director who will make a recommendation to the PDC Board of Commissioners.
- ii. **Attend PDC Board of Commissioners Meeting.** PDC Staff will present the exemption to the PDC Board of Commissioners. The borrower must attend and be prepared to participate in the Board meeting.
- iii. **Exemption Granted.** If an exemption is granted by the Board, the entity must agree to use the BPS's *Green Tenant Improvement Guide: Creating a High Performance Workplace* to integrate green building practices into the design and construction of the project to the maximum extent possible. The entity must then provide PDC with progress reports at a frequency determined by PDC staff during construction on the effort to incorporate green building practices into the project.

B. All Real Property Dispositions

1. **Project Planning**

- a. **Public Notification.** REL staff will include the Policy in a public solicitation in the event that PDC is planning to dispose of real property and a project will take place as defined in Section 2.2 Project Types as defined in the Policy.
- b. **Project Selection.** During the project selection phase, PDC staff will consider the proposer's ability and likelihood of complying with the Policy.

2. **Financial Investment Committee (FIC)**

- a. REL staff will present to FIC at various intervals of the project including: to review the public solicitation draft and the evaluation matrix for proposals; at which time, it will note the Policy requirements.
- b. Once a proposal has been selected, REL staff will include the following information in the MOU/DDA draft:
 - i. Building certification to be pursued; or
 - ii. If the buyer is seeking an exemption, PDC Staff will discuss the circumstance as described in Section 4 Policy Exemptions and next steps in coordination with other PDC Staff.

3. **Compliance**

a. **Good Faith Deposit**

- i. REL staff will include the Good Faith Deposit into the MOU/DDA. The buyer will be required to provide PDC with a deposit in the amount of to be approved by PDC's Executive Director that reflects the size of the project, in the form of either a cashier's check or promissory note, as determined by PDC staff, as security that the buyer will make a good faith effort to comply with this policy ("Good Faith Deposit").

- ii. The Good Faith Deposit will be returned to the buyer if and when PDC staff has determined the buyer has complied with the Policy.
- iii. The Good Faith Deposit will be forfeited to PDC if the buyer is (a) determined by PDC staff to be out of compliance with this policy and (b) if the buyer has been notified of this determination and given a reasonable amount of time (as determined solely by PDC) to comply with the Policy.

4. Policy Exemptions

- a. **Exemption Authority.** Only the PDC Board is authorized to approve exemptions to the policy.
- b. **Conditions for Exemption.** The buyer may seek an exemption from the Policy if they can demonstrate one of the following conditions:
 - i. Compliance would burden the project with extraordinary costs threatening the project's economic feasibility; or
 - ii. The unique construction or reconstruction circumstances of the project make building certification infeasible.
- c. **Process.**
 - i. **Submit Written Request.** The buyer must submit a written request to PDC, citing one or both of the Conditions for Exemption described above, a rationale for that condition(s), and supporting documents. The request will be reviewed by PDC staff and the Executive Director who will make a recommendation to the PDC Board of Commissioners.
 - ii. **Attend PDC Board of Commissioners Meeting.** PDC Staff will present the exemption to the PDC Board of Commissioners. The borrower must attend and be prepared to participate in the Board meeting.
 - iii. **Exemption Granted.** If an exemption is granted by the Board, the entity must agree to use the BPS's *Green Tenant Improvement Guide: Creating a High Performance Workplace* to integrate green building practices into the design and construction of the project to the maximum extent possible. The entity must then provide PDC with progress reports at a frequency determined by PDC staff during construction on the effort to incorporate green building practices into the project.

C. PDC owned and leased real property at the time of lease agreement

1. Project Planning

- a. PDC-owned property.
 - i. Following current standard operating procedure, PDC will manage construction and improvements to PDC-owned and leased buildings. PDC staff will adhere to the Policy requirements based on the project type.
- b. PDC-leased property.
 - i. Following current standard operating procedure, PDC will manage construction and improvements to PDC-owned and leased buildings. PDC staff will adhere to the Policy requirements based on the project type.

- ii. In the event that a tenant is responsible for construction and improvements to PDC-leased buildings, PDC staff will support the tenant to be compliant with the Policy requirements based on the project type. Support includes: notifying the tenant of the Policy; providing a path for compliance with the Policy; ensuring enough budget for PDC-specific improvements. PDC Staff will consult with the Clean Tech Manager for assistance.
 - c. PDC as the lessee.
 - i. PDC will give preference to locating in a third-party certified green building or will use the Policy to guide construction and improvements to the building or tenant space.
 - d. PDC leasing buildings on behalf of others.
 - i. PDC staff will follow the Policy in the event that it is leasing a building or space on behalf of another tenant and construction and improvements need to occur.
- 2. **Financial Investment Committee (FIC)**
 - a. If REL staff is required to take the project to FIC, it will provide the following information:
 - i. Notification that the Policy applies to the project and certification type to be pursued (if known at that time);
 - ii. If the lessee is seeking an exemption, PDC Staff will provide information on the circumstance (as described in Section 4 Policy Exemptions) and next steps in coordination with other PDC Staff.
- 3. **Good Faith Clause**
 - a. PDC staff will include a Good Faith clause in the lease agreement that requires the tenant to comply with the Policy in the event that they are performing the improvements.
 - i. If the tenant complies with the Policy determined by the requirements of the project type, the tenant will not be subject to the penalty.
 - ii. If the tenant does not comply with the requirements of the Policy based on the project type, PDC staff will increase the monthly rent over the lifetime of the lease in order to re-capture what would be a \$10,000 deposit.
- 4. **Policy Exemptions**
 - a. **Exemption Authority.** Only the PDC Board is authorized to approve exemptions to the policy.
 - b. **Conditions for Exemption.** The tenant may seek an exemption from the Policy if they can demonstrate one of the following conditions:
 - i. Compliance would burden the project with extraordinary costs threatening the project's economic feasibility; or
 - ii. The unique construction or reconstruction circumstances of the project make building certification infeasible.
 - c. **Process.**
 - i. **Submit Written Request.** The tenant must submit a written request to PDC, citing one or both of the Conditions for Exemption described above, a rationale for that condition(s), and supporting documents. The request will be reviewed by PDC staff and the Executive Director who will make a recommendation to the PDC Board of

Commissioners.

- ii. **Attend PDC Board of Commissioners Meeting.** PDC Staff will present the exemption to the PDC Board of Commissioners. The tenant must attend and be prepared to participate in the Board meeting.
- iii. **Exemption Granted.** If an exemption is granted by the Board, the tenant must use the BPS's *Green Tenant Improvement Guide: Creating a High Performance Workplace* to integrate green building practices into the design and construction of the project to the maximum extent possible. The tenant will provide PDC with progress reports at a frequency determined by PDC staff during construction on the effort to incorporate green building practices into the project.

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