

Burlington Planning Commission

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Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

Burlington Planning Commission

Tuesday, September 10, 2019, 6:30 P.M.
City Hall, Conference Room 12, 149 Church Street
AGENDA

I. **Agenda**

II. **Public Forum**- Time Certain 6:30 p.m.

III. **Chair Report**

IV. **Director's Report**

V. **Proposed CDO Amendment: Lot Coverage & Parking for Convalescent Homes**

The Planning Commission will hear a proposal from Birchwood Terrace regarding requested changes to the lot coverage bonus and parking requirements for senior housing/convalescent homes. Information related to this agenda item is included in the agenda packet on pages 3-24.

Staff Recommendation: The Commission may direct staff to prepare a zoning amendment that applies to some or all of these requested changes.

VI. **Proposed ZA-19-09: Zoning Administrative Officer**

The Planning Commission will review a draft memo, prepared by staff at the Commission's request, to accompany the proposed zoning amendment when it is forwarded to City Council. Information related to this agenda item is included in the agenda packet on pages 25-27.

Staff Recommendation: The Commission should review the draft memo and provide any additions or corrections to staff. The Commission is then recommended to approve the municipal bylaw amendment report and forward the amendment to Council.

VII. **Approval of Green Globes Standard**

The Planning Commission will consider approval of Green Globes as an alternative to LEED for High Performing Building Standards under the requirements of *planBTV: Downtown Code Section 14.4.3 b*. Information related to this agenda item is included in the agenda packet on pages 28-50.

Staff Recommendation: The Commission is recommended to approve the Green Globes system, at 3 Globes or higher, for use as a Green and High Performing Building standard under Sec. 14.4.3 of the *Burlington CDO*.

VIII. **Proposed ZA-20-02: Accessory Definitions**

The Planning Commission will discuss a proposed amendment to the Burlington *Comprehensive Development Ordinance* regarding definitions of and standards for various accessory uses and structures. Information related to this item is included in the agenda packet on pages 51-55.

Staff Recommendation: Approve the municipal bylaw amendment report and warn for a public hearing.

IX. **Committee Reports**

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505. Written comments on items may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401, or at mtuttle@burlingtonvt.gov

Tuesday, September 10, 2019

X. Commissioner Items

- a. Next meeting is September 24, 2019 at 6:30pm in Conference Room 12

XI. Minutes and Communications

- a. Minutes from the August 27, 2019 meeting and a communication are enclosed on pages 55-60 of the agenda packet.

XII. Adjourn

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MEMORANDUM

To: Burlington Planning Commission

From: Birchwood Prop, LLC (“Birchwood”)

Date: July 16, 2019

Re: Convalescent Homes/Parking and Lot Coverage Requirements

Introduction:

This summary memorandum (“Memo”) is designed to explore some of the challenges convalescent homes face under the current Comprehensive Development Ordinance (“CDO”) in serving often vulnerable communities on their existing footprints. While this Memo addresses Birchwood Terrace’s (“Birchwood”) situation specifically, the challenges that Birchwood faces are not unique, and where possible, this Memo brings in data related to other facilities to show how the proposed changes to the CDO go beyond this one facility and would have beneficial impact City-wide.

Birchwood’s Objective:

Birchwood has explored several possible options for expanding the parking at Birchwood, a skilled nursing facility/convalescent home, located at 43 Starr Farm Road, in Burlington’s New North End.

Birchwood’s History and Parking Issues:

Birchwood was built in 1965 on a six acre lot at 43 Starr Farm Road and was permitted by the City for 160 beds.¹ Birchwood currently operates 144 beds. Parking at Birchwood was not a major issue until roughly 2016. At that time, the parking situation dramatically changed as a result of the City’s decision to shut off Starr Farm Road to on-street parking (given its proximity to the adjacent school). At the time, Birchwood only had 45 parking spots under its approved parking plan. The loss of on-street parking led to Birchwood’s staff and visitors parking on the grass, which led to neighborhood complaints. Staff also parked on Grey Meadow Drive, an adjacent side street, which the neighborhood opposed as it had a substantial impact on this residential street (particularly during off-cycle shift changes).

Based on the unapproved parking on the lot, the City issued a notice of violation (#334328) on May 25, 2017, which required Birchwood to fix a variety of zoning violations and to obtain an approved site plan for the facility which addressed the parking issues (the “NOV”). Over the course of the following year, Birchwood explored various options, with close City collaboration,

¹ Grey Meadow Drive is part of the lot but is a City right-of-way. When this roadway is removed, the working lot size is 5.76 acres, which is the acreage utilized in calculating lot coverage for this Memo.

ranging from off-site parking to construction of a parking garage to address the parking needs at Birchwood.

On January 8, 2019, the Development Review Board (“DRB”) approved the site plan submitted by Birchwood to bring the site into compliance and issued a Certificate of Appropriateness (Permit No. 19-0468CA). The appeal period for this permit expired on February 7, 2019. The DRB-approved site plan increased the number of approved parking spots from roughly 45 spots to 75 spots. This expansion, while helpful, did not fully address Birchwood’s parking needs as indicated by its operations staff’s observations and from the independent parking study commissioned from Resource Systems Group, Inc. (“RSG”) (attached as **Exhibit A**). Birchwood was clear about this fact before the DRB, but recognized the limitations under the current CDO and crafted its proposal to come into compliance under existing zoning as required by the NOV.

Birchwood is now progressing to Phase II of its plan to address its long-term parking needs by proposing strategic amendments to the CDO to allow for greater parking and lot coverage for both its staff and patients/residents. A more complete timeline of this process is attached as **Exhibit B**.

Convalescent Home Parking and Lot Coverage Needs:

Convalescent homes are a conditional use in most districts of the City and are required to have at least one parking spot per four beds at these facilities. The lot coverage and parking requirements that apply to these facilities do not take into account the need for parking that current staffing and safety requirements require. A summary of some of the staffing requirements and visitation needs for Birchwood is attached as **Exhibit C**.

As this memorandum will indicate, a comparison of convalescent homes in the community indicates that the CDO does not accurately provide the level parking and lot coverage that these valuable community resources require. These facilities provide necessary services to the community, by providing continuing support and care to a variety of vulnerable individuals with long-term or acute rehabilitation needs. Given the rigorous regulatory staffing requirements imposed under federal and state law, additional flexibility is needed to support these institutions and to ensure that can fulfill their mission and intended role.

Increasingly, the lines between what a convalescent home offers versus other medical-related uses is blurring, which requires close attention from a zoning perspective to ensure that the evolving needs for these facilities are met, while treating these facilities appropriately in comparison to other similarly situated land uses. To address and to provide the level of parking needs that these unique facilities face, two separate but interrelated issues have to be addressed under the CDO: (1) parking; and (2) lot coverage.

1. Parking:

Under CDO Article 8, the parking table currently requires one parking spot per four beds for convalescent homes. As applied to Birchwood (160 beds), this equates to 40 parking spots. Under the formula for calculating maximum parking allotments, section 8.1.9, (which allows an owner to have a maximum parking and to go 25% above the minimum parking requirement without obtaining a waiver from the DRB), 50 parking spots is the maximum that could be constructed without obtaining a maximum parking waiver from the DRB. See CDO section 8.1.09. There is no maximum parking waiver cap and the DRB has the discretion to evaluate these requests on a case-by-case basis.

The DRB, on January 8, 2019, approved with conditions, the expansion of Birchwood's parking to 75 parking spots. 75 parking spots was the most that the DRB could approve given existing lot coverage constraints. At the 75 spot level, Birchwood's parking spot/bed ratio is at .46875%.

The RGS Parking Study, commissioned by Birchwood, showed a parking need of 96 spots. This would result in a new parking/bed ratio of .600%.

For comparison purposes, for other similar convalescent homes in the area, the parking/bed ratio is higher. At Starr Farm Nursing Center (98 Starr Farm Road) the ratio is .660% (99 parking spots for 150 beds). Parking at Green Mountain Nursing (Fort Ethan Allen, in Colchester) is .932% (68 spots for 73 beds). The fact that these comparable facilities have substantially higher parking spot/bed ratios than Birchwood is not surprising, and demonstrates the need for redefining the ratio that applies to these facilities collectively, such as a one parking spot per two bed ratio. For reference purposes, other similar facilities, such as group homes, sorority and fraternities (same), hospital (same), currently require one parking spot per two beds, which, in turn, influences how much parking they can have at maximum levels without needing to obtain DRB approval.

Recommendation:

It would our recommendation to increase the minimum parking for convalescent homes to one spot per two beds to align with similarly intensive uses in light of the changing staff levels and that convalescent homes now provide and require. In short, the one to four bed ratio is inadequate to accommodate the needs of these facilities, and should be adjusted upwards to signal this (and to prevent a facility from providing less parking than would be required to meet these needs).

Application to Birchwood:

Under the one spot per two bed ratio, this would require Birchwood to provide a minimum of 80 parking spots. Applying the 25% adjustment from the minimum requirement for maximum parking without needing to first obtain a DRB parking waiver, Birchwood would be able to

construct 100 spots. These 100 spots would align well with the recommendations from the RSG Parking Study, which show a demonstrated parking need for 96 spots at the facility, and would approximate the levels of parking already in place at the other two similar convalescent homes evaluated in the RSG Parking Study.

2. Lot Coverage

Lot coverage also needs to be considered in addition to the parking requirements.

In its zoning district (RL), Birchwood is limited to 35% lot coverage. Birchwood is able to qualify for additional 5% lot coverage as it meets the requirements for the senior housing bonus under CDO section 4.4.5-5, for total maximum lot coverage of 40%. At 40% lot coverage, Birchwood is limited to its current 75 parking spots.

While we have not evaluated lot coverage limitations applicable to other convalescent homes, and Starr Farm Nursing Center is certainly on a much larger lot, it is likely that new facilities, in predominately urban settings would also face lot coverage challenges – given the level of parking and structural requirements associated with these facilities in their day-to-day operation.

Recommendation:

It would be our recommendation to increase the senior housing bonus to 44% in the residential-low category to align with what is permitted in the inclusionary housing bonus under 9.1.12 in RL/RL-W, provided that stormwater impacts are mitigated on site (as is already required). This lot coverage level is already contemplated in comparable settings for inclusionary housing. Providing this additional lot coverage would be valuable in assisting these sites with their development and operation, and would still be subject to DRB review and approval. This review will ensure that community impact is adequately considered as well as appropriately mitigated. It would also signal that senior housing is, in many ways, affordable or inclusionary housing and is providing a beneficial service to this community.

Application to Birchwood:

If the 44% lot coverage applied to Birchwood, if approved by the DRB, Birchwood would be able to construct 93 parking spots on site – which would effectively cover their parking needs on site.

Conclusion:

In sum, the CDO should be amended to address the parking and lot coverage needs of convalescent homes as a use type. In this memorandum, we recommend two targeted recommendations: (1) adjusting the minimum parking requirements to one parking spot per two beds for convalescent homes; and (2) aligning the senior housing and inclusionary bonus lot coverage waivers to provide more lot coverage for these uses. Birchwood's experience over the

past two years shows the profound need for these adjustments, which while obviously beneficial to its own operations, should have benefits to these facilities generally as well as the community in hopefully encouraging and fostering convalescent homes as valued community resources and assets.



MEMO

TO: Alicia Dimario, Executive Director, Birchwood Terrace
CC: Jess Phelps, Dinse P.C.
FROM: Mark Smith, PE
DATE: November 15, 2018 (rev. Feb 1, 2019)
SUBJECT: Starr Farm Road Facility Parking

RSG has performed an analysis of parking needs for the Birchwood Terrace¹ nursing facility on Starr Farm Road in Burlington, VT. This memo includes the following sections:

1. Problem statement
2. Relevant parameters for improvement, including city ordinance restrictions
3. Background information for the facility
4. Current parking management efforts
5. Parking supply and need survey results
6. Comparison to two similar nearby facilities
7. Study findings
8. Parking management recommendations (plan)

1.0 PROBLEM STATEMENT

Birchwood Terrace currently has parking needs that significantly exceed the capacity of their on-site parking area(s). A substantial contributing factor to this condition is a recent restriction to on-street parking along Starr Farm Road, forcing all parking on-site.

2.0 PROJECT PARAMETERS

To provide more parking spaces, the City of Burlington zoning regulations require a parking study, per Comprehensive Development Ordinance (CDO) Sec. 8.1.9 Maximum Parking Spaces – Item 5:

- A. The applicant requesting the waiver shall also provide a peak demand parking study for two similar uses in the area; and,
- B. The following additional review criteria shall be addressed regarding how:
 - (i) The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses;

¹ A.k.a. Kindred Transitional Care & Rehabilitation Birchwood Terrace



- (ii) The proposed development demonstrates that its design and intended uses will continue to support high levels of existing or planned transit and pedestrian activity; and,
- (iii) The site plan indicates where additional parking can be redeveloped to a more intensive transit supportive use in the future.

The Burlington CDO² calls for 1 parking space for 4 beds (Convalescent Homes), with a 125% maximum. Thus, for Birchwood the maximum parking allowed is 50 spaces, assuming the current permit allowance for 160 beds.

3.0 BACKGROUND

Birchwood Terrace is a 144-bed³ Skilled Nursing Facility (SNF) that provides short term and long-term care to the Greater Burlington area's most frail seniors, with as many as 104 residents calling Birchwood their permanent home. As a SNF, we are governed by both the state and federal government, which requires that we provide services that meet each individual's care needs. This includes, but is not limited to, 24-hour nursing care and services, access to a physician 24 hours/day, medication management, 3 meals/day, physical therapy, occupational therapy, speech therapy, respiratory therapy, daily activities, Social Services, laundry and housekeeping services, facility maintenance, laboratory services, x-ray services, transportation, banking, etc. There are also mandated staffing requirements to ensure the facility provides adequate staffing based on the residents' needs.

The Facility employs or contracts 168 employees and is a 24/hour a day business. Staff includes:

- Nursing⁴/medical – (3) 8-hours shifts, 7 days a week
 - LNA/CLA – 6:00 am to 2:30 pm, 2:00 pm to 10:30pm, and 10pm to 6:30 am
 - LPN/RN – 6:45 am to 3:15 pm, 2:45 pm to 11:15pm, and 10:45pm to 7:15 am
 - Physicians – hours vary
- Maintenance – Monday through Friday 7:30 am to 4:30 pm, and as needed
- Administration – Monday through Friday from 7:30 am to 6:00 pm
- Therapy – PT, OT, ST, RT⁵ - 7 days a week from 7:00 am to 5:00 pm
- Culinary/Dietary – 7 days a week, from 5:00 am to 7:30 pm
- Laundry/Housekeeping – 7 days a week, from 5:00 am to 6:00 pm

Visitors/Vendors

The facility welcomes family, friends, guests and vendors at any time. Peak visiting hours are from 10:00 am to 1:00 pm and again from 4:00 pm to 7:00 pm. It is not uncommon for there to be 20-25 visitors here at peak times.

² Section 8.1.8

³ The facility is permitted for 160 beds, however only 144 beds are available at this time.

⁴ Licensed/Certified Nursing Assistant, Licensed Practical Nurse/Registered Nurse

⁵ Physical, occupational, speech or respiratory

Student Nursing

The facility also partners with the local colleges to provide educational and practical training for their Nursing Programs. Both the University of Vermont and Vermont Technical College utilize Birchwood as their clinical site for practicum work. Class sizes range from 8 students to 30 students, with 1 to 4 clinical instructors to oversee their work.

4.0 BIRCHWOOD PARKING MANAGEMENT

On-Street Parking

Parking along Starr Farm Road or North Avenue is currently not allowed.

Shared Parking

Shared parking takes advantage of 2 adjacent parking lots where the associated land use is complementary to each. Typically, these are applicable in large mixed land use developments where residential uses (peaking in the nighttime hours) complement commercial uses, which peak in the daytime.

Birchwood is situated in a largely residential area with no neighboring businesses or institutions with complementary parking needs. Flynn Elementary School is located across Starr Farm Road to the north, with their own parking restrictions. Birchwood has worked with School Administration to limit/cease use of Birchwood's parking lot for school drop-offs and pick-ups.

Off-Site Parking

Birchwood has pursued several off-site parking options within the last year, including:

- Leddy Park
- North Avenue Alliance Church
- St. Mark's Church
- Price Chopper, Colchester
- Elks Lodge

Parking was either not available at these locations, or the number of spaces available was far less than the facility's current additional needs.

Parking Demand Management

- Birchwood encourages travel by other transportation modes for all employees, however, many visitors and nursing students do not have the luxury of time required to ride transit for a short duration visit.
- Sidewalks currently exist on Starr Farm Rd. leading from the facility to North Avenue.
- Transit is readily available throughout the day via the North Avenue GMT line, with north and southbound stops at Starr Farm Rd.
- Bike parking is available on-site, however peak parking demand still occurs in winter months, when biking is impractical.
- Currently 33 employees utilize alternate means of transportation to get to work.

Other Considerations

Signage has been recently upgraded on-site to indicate where parking is allowed and how each lot is used.

Employee vehicle placards are implemented to ensure only authorized vehicles use designated parking areas.

Ideally, all parking should be within close proximity of the facility, minimizing travel time, thus optimizing staff's ability to get to work, which directly impacts patient care.

Parking should have adequate lighting for employee and vehicle safety, as well as the ability to be maintained in the winter time.

5.0 BIRCHWOOD FACILITY PARKING

Existing Site Parking Supply

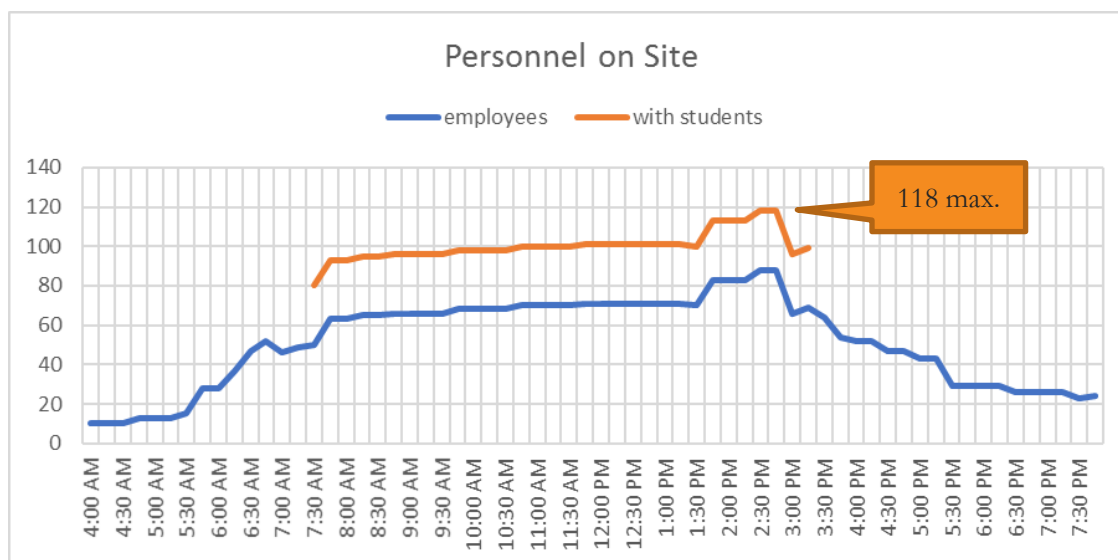
The existing facility has 5 general parking areas (see site plan):

- The maintenance area on the SW end, which serves company vehicle parking only (# of spaces unknown/undesigned)
- The SW visitor lot (9 spaces)
- The NW visitor lot (11 Spaces)
- The NE Employee Lot (17 spaces)
- The SE Employee Lot (17 spaces)

Total parking is 54 spaces + the maintenance lot capacity

Parking Need

RSG polled facility management for the number of employees and the hours (shifts) for each group. Detailed personnel shift data by time of day is attached. Plotting this data shows a theoretical maximum need, with and without the visiting student population, as shown in Figure 1. There are an estimated maximum of 118 personnel on-site, not including visitors.

FIGURE 1. MAXIMUM PARKING NEED BASED ON PERSONNEL

RSG staff observed parking activity on 10/5, 10/10, 10/24 and 10/26. Observations include:

- Employee parking was full and overflowed into grass areas by as many as 24 vehicles (72 vehicles vs. 48 available spaces).
- Visitor parking was 50-80% full (10-16 of 20 spaces occupied), however peak visitor hours are known to occur later than the times of observations.
- There were 3-4 vehicles in the maintenance area (no actual designated spaces).

Comparing the maximum observed parking vs. maximum personnel on-site data illustrates that significant TDM⁶ measures, such as car-pooling and use of alternate modes, are already in place.

Parking Ratios – Supply vs. Need

The current parking supply is 54 designated spaces. [space/permitted bed ratio = 54/160 or **0.338**]

Based on site observations, the current parking need is determined as follows:

- 72+ employee (personnel)
- 20 visitor
- 4 maintenance area

Total need is at least 96 spaces. [space/bed ratio = 96/160, or **0.600**]

⁶ Transportation Demand Management

6.0 OTHER EXAMPLE FACILITIES

Starr Farm Nursing Center, Starr Farm Road, Burlington:

- Recent aerial photos show 99 parking spaces for this 150-bed facility⁷
- The resulting parking space/bed ratio = $99 / 150$, or **0.660**

Green Mountain Nursing, Fort Ethan Allen, Colchester:

- Recent aerial photos show 68 parking spaces for this 73-bed facility
- The resulting parking space/bed ratio = $68 / 73$, or **0.932**

7.0 SUMMARY OF FINDINGS

Our findings include:

1. Birchwood Terrace provides a comprehensive care service that entails a wide variety of services and subsequent staffing needs.
2. Birchwood's operation has aspects that demand more parking (e.g. visiting nurses) than typical convalescent nursing facilities, as implied by the City CDO.
3. Staffing hours are well staggered to maximize parking efficiency (e.g. shift changes are staggered to minimizing space needs).
4. The current site is well situated to take advantage of the use of alternate transportation modes and estimated staff participation in use of alternate modes well exceeds current norms ($33/168=20\%$)⁸
5. Comparing theoretical employee demand to observed maximum parking indicates excellent TDM measures are already taking place.
6. On-site employee parking needs regularly exceed supply, as observed, by at least 24 spaces.
7. Other typical facilities (see examples) supply more parking (i.e. ratio of spaces per patient bed) than Birchwood.
8. A waiver is justified on the maximum spaces allowed by the CDO for 96 spaces (vs. 50 allowed).

⁷ Facility capacity was determined from website information.

⁸ VTrans TDM guidelines suggest 5-10% is typical

8.0 PARKING MANAGEMENT PLAN

With daily on-site personnel and nursing students peaking at 118 persons, plus visitors and vendors/contractors, the CDO restriction to 50 parking spaces⁹ is clearly not appropriate or applicable.

Even with a waiver on the restriction of the maximum parking spaces, site constraints may limit parking to less than the suggested 96 spaces, thus parking management is essential.

To minimize the necessary parking demand, Birchwood Terrace can take the following measures:

1. Optimize the site layout for the number of parking spaces, loading, and site circulation.
2. Ensure continued easy access to the existing bus stops on North Avenue (i.e. via sidewalk), some 450 feet away.
3. Provide on-site bicycle parking, including secure parking for overnight storage and during inclement weather.
4. Continue to encourage the use of alternate modes by employees by:
 - a. Providing incentives such as health insurance credits, bus pass credits, or other rewards.
 - b. Providing a flexible workspace, allowing staggered shifts, telecommuting where possible.
 - c. Exploring rideshare options such as carpooling/vanpooling.
 - d. Offering a guaranteed ride home program.
5. Create sensible rules for on-site parking that ensure opportunities for shared use between users is maximized.
6. Optimize shift staggering so that the availability of spaces is optimized.
7. Consider obtaining a 1-year membership in the Chittenden Area Transportation Management Association (CATMA). CATMA provides a range of services that assist an organization to better understand and manage their transportation demands. As a member of CATMA, Birchwood Terrace will have access to their knowledge base and programs. In addition, CATMA may be able to assist with the following programs:
 - a. Securing off-site parking;
 - b. Coordinating shuttles to and from the site, if needed;
 - c. Guaranteed ride home program;
 - d. Implementing a Bulk Transit Pass program for employees; and
 - e. Providing regional expertise on parking management strategies.

⁹ Maximum 1 space per 4 beds plus 25% (i.e. $160/4 \times 1.25$)

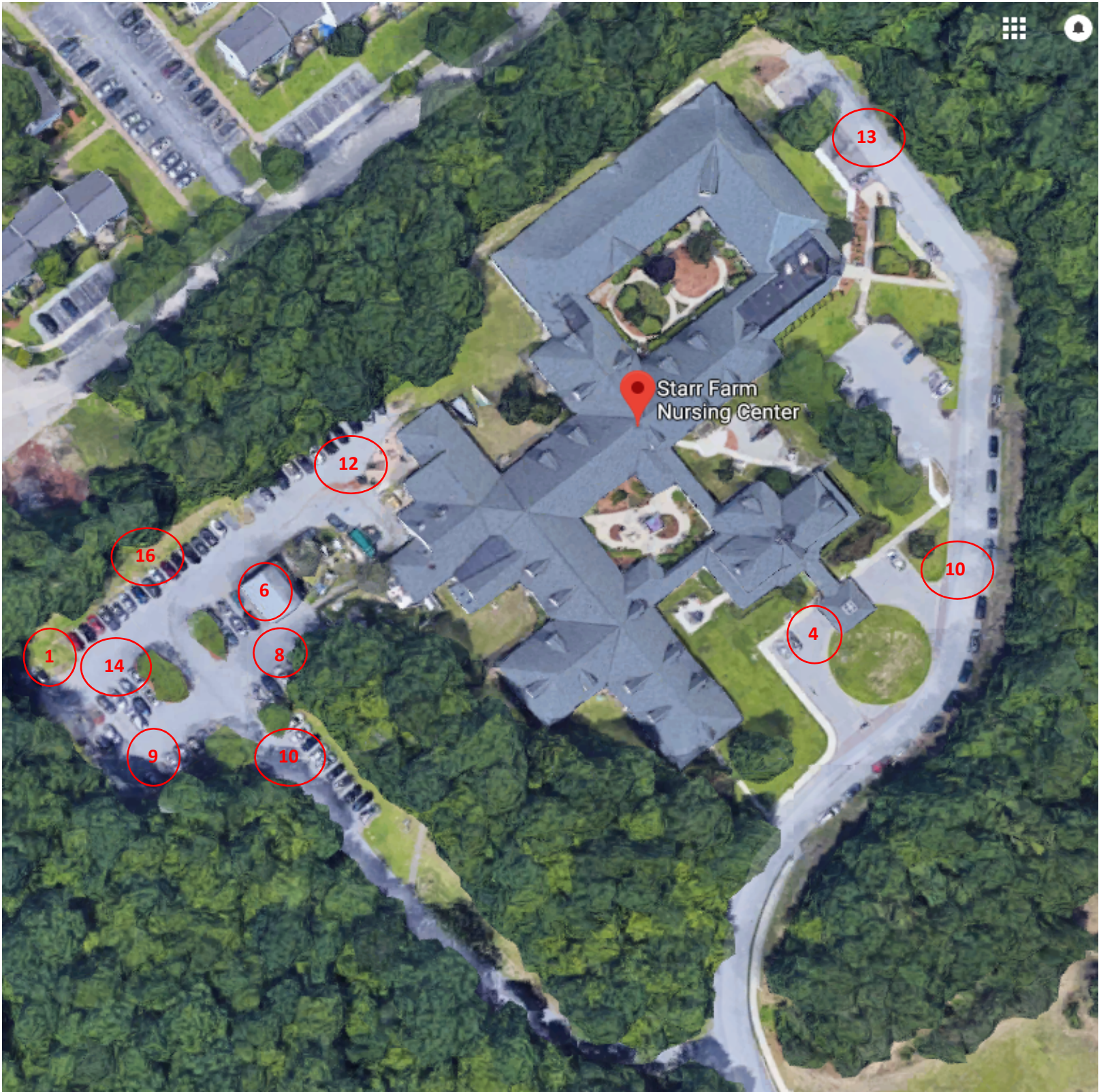
END OF MEMO

Attachments:

1. Birchwood Terrace site map
2. Starr Farm site map
3. Green MT Nursing site map
4. Birchwood personnel on-site by time-of-day data







13
16
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EXHIBIT B -

Timeline of Events

- Parking Ban went into effect on Starr Farm Rd. surrounding the Flynn Elementary School in 2016, bringing all vehicles associated with the facility (and some from school) on site
- Received notice of violation in May 2017
- We had received an email from the Public Works Dept indicating it was ok to park on grass secondary to being in Ward 4, which was incorrect.
- In attempts to comply with the Notice of Violation, the below measures were taken:
 - Striped existing lots to maximize parking
 - Enhance signage indicating Facility Only parking, and delineation of guest/staff parking
 - Ordered parking placards for EE's to distinguish EE's from visitors
 - Initiated internal parking study over a 2-week period of time indicating the need for 100 spaces.
 - Explored off-site parking options which were not able to accommodate or meet our needs secondary not enough available spaces, not adequate lighting, safety issues/concerns for staff on 3 shifts:
 - N. Ave Alliance Church parking lot
 - St. Marks Church
 - Leddy Park
 - Price Chopper Parking lot and adjacent lot
 - Explored hiring Security to ensure only Birchwood staff/guests were parking on property (GMCS and Safe and Sound Security) – which neither were capable of doing secondary to staffing
- Employed Civil Engineering Group to do a complete and accurate site study/plan to capture current conditions/lot coverage.
- Met with Billy Burns, Traffic Control Officer, to verify appropriate street parking options
- Initiated Street Parking in October 2017 in surrounding neighborhoods (Grey Meadows, Starr Farm Rd., which was not well received by the neighbors, prompting many calls to Dave Hartnett, Kurt Wright, and Mayor Weinberg.
- City and the facility entered into an agreement to allow all parking to remain on-site while working towards an adequate solution.
- Proposed allowing facility to be considered “senior housing”, allowing for additional lot coverage in August 2018.
- RSG completed an external parking study in October 2018 indicating the need for 96 spaces.
- Proposed exceeding maximum parking allowance to the DRB in January 2019, with approval (phase 1) for work completion by August 1, 2019.

- Continued work with CEA and Landscape designer to enhance parking and screening we plan for phase 2.

Exhibit C – Staffing Requirements

1. Summary of Federal and State Requirements

Birchwood Terrace is a 144-skilled Nursing Facility (SNF) that provides care and services to its communities consisting of sick, frail and elderly residents. Overall, the facility consists of a 50-bed secured Memory Care Unit, a 54-bed Long-term Care Unit, and a 40-bed Rehabilitation Unit.

Skilled Nursing Facilities are regulated by CMS (Centers for Medicare and Medicaid Services), the Vermont Department of Aging and Independent Services, the Division of Licensing and Protection, and the Division of Fire Safety. Annual Surveys are conducted to ensure the facility is compliant with all local, State and Federal requirements in relation to resident care and services, building and environmental regulations.

Both Vermont State and Federal Guidelines mandate SNF's provide minimum staffing requirements. The Vermont Licensing and Operating Rules for Nursing Homes states that "The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practical physical, mental and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care or as specified by the licensing agency."

(a) Sufficient staff. The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(d) Staffing Levels. The facility shall maintain staffing levels adequate to meet resident's needs.

1. No fewer than 3 hours of direct care per resident per day, on a weekly average including nursing care, personal care and restorative nursing care, but not including administration or supervision of staff; and of the three hours of direct care, no fewer than 2 hours per resident per day must be assigned to provide standard LNA care (such as personal care, assistance with ambulation, feeding, etc.) performed by LNA's or equivalent staff and including meal preparation, physical therapy or the activity program.

Per CMS guidelines:

““The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practical physical, mental and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment.”

In addition to Nursing Services, the facility is required to provide Food and Nutrition Services (3 meals and snacks) equipped to manage specialized diets, a Dietician, Specialized Rehabilitative Services (PT/OT/ST), Activities, Social Services, Mental Health Services, Behavioral Health Services, Physician Services, Pharmacy Services, Laboratory Services, Laundry Services,

Housekeeping Services, Facility Maintenance, Administration, and Business Office (management of resident funds.)

In addition, CMS states “The resident has the right to receive visitors of this or her choosing, at the time of his or her choosing, subject to the resident’s right to deny visitation when applicable, and in a manner that does not impose of the right s of another resident.” It further clarifies, “The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident’s right to deny or withdraw consent.” And the “The facility must provide immediate access to a resident by others who are visiting with the consent of the resident.”

2. Typical Staffing/Visitor Numbers (broken down per shift/per day)

To meet these requirements for a full census, the typical numbers of individuals on site (in addition to residents) is as follows:

LNA/CAN:	10p – 6:30am – 6 aids 6am – 2:30pm – 13 aids 2pm – 10:30pm – 13 aids
LPN/RN:	10:45pm – 7:15am – 4 nurses 6:45am – 3:15pm – 10 nurses 2:45pm – 11:15pm – 7 nurses
Nursing Admin:	7:30am – 4pm – 3 nurses 8am – 4:30pm – 2 nurses
Administration:	8am – 5pm – 7 staff 9am – 2pm – 1 staff 10am – 6pm – 1 staff
Maintenance:	5am – 3pm – 1 7am – 4:30pm – 1 8am – 4pm – 1
Activities:	7:30am – 4:30pm – 1 8:30am – 6pm – 2 10am – 4pm – 1 11am – 7pm - 1
Dining Services:	5am – 2pm – 1 5:45am – 2:30pm – 2 6:30a – 3:30pm – 2 8am – 5pm – 2 11am – 7:30pm – 1

	3:30pm – 7:30pm – 3
Therapy:	6:30am – 2:30pm – 2 7am – 3:00pm – 4 8am – 5pm – 3
Laundry/Housekeeping :	5am – 1pm – 1 6:30am – 2:30pm – 5 8am – 5pm – 1 12pm – 7pm – 1
MD:	8am – 5pm – 2
Students:	7:45am – 3:00pm – 30 students (2 days/week)
Visitors :	7am – 7pm (average 10 – 20 visitors)

Department of Planning and Zoning

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Ryan Morrison, Assistant Planner
Shaleigh Draper, Zoning Clerk
Layne Darfler, Planning Technician



TO: Burlington Planning Commission
FROM: Scott Gustin, Principal Planner
DATE: April 29, 2019
RE: CDO Amendment ZA-19-09: Zoning Administrative Officer

Overview & Background

In anticipation of the Planning & Zoning Department restructuring associated with the City's permit reform effort, the City Attorney has recommended that Sec. 2.3.2, *Appointment*, of the *CDO* be amended to disjoin the director of planning and zoning position from that of the zoning administrative officer and reflect the ZAO appointment process.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

The purpose of this proposed amendment is to disjoin the director of planning and zoning from the zoning administrative officer within the Burlington Comprehensive Development Ordinance.

Proposed Amendments

To achieve the goals identified above, the proposed amendment affects the following sections of the *Burlington Comprehensive Development Ordinance*:

Sec. 2.3.2 Appointment

~~The director of planning and zoning shall serve, ex officio, as the city's zoning administrative officer (ZAO or administrative officer), and upon the recommendation of the planning commission shall be appointed by the~~ **mayor with approval of the majority of the full city council** ~~legislative body~~ for a term of **up to** three years. ~~The ZAO may be removed for cause at any time by the legislative body after consultation with the planning commission.~~

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

Compatibility with Proposed Future Land Use & Density

The proposed amendment has no impact on the proposed future land use and density goals contained within planBTV (the City's Municipal Development Plan).

Impact on Safe & Affordable Housing

The proposed amendment has no impact on the provision of safe and affordable housing.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

Planning Commission Process				
Draft Amendment prepared by: Staff, per city-wide charter vote	Presentation to & discussion by Commission 4/9/2019	Approve for Public Hearing 4/9/2019	Public Hearing 5/28/2019	Forward to Council 9/10/2019
				Continue discussion
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Committee discussion	Ordinance Cmte recommends to Council [as is / with changes]	Second Read & Public Hearing	Approval & Adoption
				Rejected

Burlington Planning Commission

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Bruce Baker, Vice-Chair
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Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur*



TO: Burlington City Council
Mayor Weinberger
FROM: Burlington Planning Commission
DATE: September 10, 2019
RE: ZA-19-09: Commissioner Comments on reorganization and changes to appointments

DRAFT

The Planning Commission has forwarded ZA-19-09 to the City Council for adoption in order to ensure that the *Burlington Comprehensive Development Ordinance* is consistent with the City Charter, which was amended in March 2019 by the voters. The charter change created two new departments, the Planning Department and the Department of Permitting and Inspections, and gave the Mayor the authority to appoint the Planning Director and Zoning Administrative Officer. The Commission understands that the changes to the City's charter, the FY2020 budget, and department appointments have all been approved consistent with this change. Additionally, the Commission recognizes the need to forward this amendment in order to eliminate inconsistencies between the City's ordinances and the charter, but offers the following comments on the reorganization that prompted these changes.

Leading up to the city-wide vote, the Commission discussed the proposal to reorganize the Planning & Zoning Department to 1) meet the intent of the permit reform process to create a single permitting department, and to 2) consider the merger of the long-range planning functions of the department with CEDO. As a part of this reorganization, the proposal included a change to the appointment of the Planning Director to be by the Mayor instead of the Planning Commission. The Commission supported the creation of a "one-stop" permitting center for the City. However, the Commission voiced its concerns about splitting the long-range planning and zoning functions of the department, as well as the Mayoral appointment of the Planning Director. Ultimately, the Commission recommended keeping planning and zoning within the same department, even if that meant that planning staff joined a new permitting and inspections department, and that the Planning Commission retain authority to appoint the director.

More specifically, regarding the separation of planning and zoning functions, the Commission was concerned about the loss of coordination among the staff and the Commission over the course of creating plans, subsequent amendments to or new ordinances created from those plans, through the administration and interpretation of the ordinance. The Commission felt strongly that these functions should stay within the same department. Further, it felt that if there was a desire to more closely align zoning with other permitting functions, or planning with other policy functions, these roles should have been brought into one larger department.

Regarding the appointment of the Planning Director, the Commission was concerned that this would result in a loss of oversight by the Planning Commission into the development and administration of the ordinance by the Department(s). Additionally, the concern was raised about how disputes or inconsistencies between the intent of the ordinances, developed by planning, and the administration/interpretation of the ordinances, implemented by the permitting department, would be resolved if there was not a single line of accountability at the department-head and commission levels.

Ultimately, while the Commission has forwarded ZA-19-09 for the Council's action, it does so without recommendation due to the enclosed concerns with the reorganization of the City's planning and zoning functions. Thank you for considering these comments as you deliberate on the adoption of this amendment.



THE CITY
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**Department of
City Planning**

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TO: Burlington Planning Commission
FROM: David E. White, FAICP, Director of Planning
DATE: 7/18/2019
RE: Approved High performance building systems – Green Globes request

At your last Planning Commission meeting (7/9/19), the Commission heard a request from Cleary Buckley of Smith Buckley Architects to consider the inclusion of Green Globes among the list of high performance building systems approved for use under the downtown form based code.

Sec. 14.4.3- Building Types General and Green Buildings requires that any new Building, addition, and/or major renovation of an existing Building over 50,000 square feet of GFA, be built to an approved high performance Building standard. Currently the list of approved standards is limited to:

- a) Gold Certification or higher under the applicable LEED standard;
- b) Petal or Net Zero Energy Certification under the Living Building Challenge; and,
- c) Passive House Certification;

This section also provides that another "nationally recognized equivalent quantifiable high performance building system or standard may be approved by the Planning Commission." In considering any such request, direction offered by the ordinance centers on three things:

- that the proposed system be "nationally recognized"
Both Green Globes and LEED are late 1990's adaptations of the United Kingdom's Building Research Establishment Environmental Assessment Method (BREEAM) rating system. While LEED is more common in the US, Green Globes is more common in Canada. However, both LEED and Green Globes are being utilized across both countries, including in federal, provincial/state, and municipal green building policies. Green Globes is gaining in popularity across the US and, among other endorsements, has recently been approved for use in federal projects by the General Services Administration's (GSA's) Office of Federal High-Performance Buildings.
- that the proposed system be "equivalent" to one or more of the high performance building standards listed
Like LEED, Green Globes is comprehensive in the range of both energy and environmental topics it addresses. Also like LEED, Green Globes offers certification for a range of project types including new construction, core and shell, existing buildings, and interiors. While each certification system offers a unique framework and approach, both include commonalities regarding the overall aspects of building design, construction, operation, and maintenance that lead to high-performing buildings. According to third-party evaluations in both US and Canada, LEED and Green Globes result in similar performance outcomes.
- that the proposed system be "quantifiable"
Like LEED, Green Globes is a point-based system with certification levels awarded in 4 progressive levels. LEED certification (Certified to Platinum) is based upon meeting a set of prerequisites, and scoring of additional criteria within a 110-point scale. Green Globes certification (1-4 Green Globes) has no prerequisites, and criteria are weighted within a 1000-point scale.

It is the Planning staff's recommendation that this request be approved at the 3 Globes or higher level for inclusion.

Thank you for your consideration, and please feel free to contact me should you have any questions.



Comparison of Criteria from Green Globes® for New Construction (GG NC) 2013, LEED 2009, and LEED v4 (As of 02/15/18)



Overview of GG and LEED Certification Requirements

- Both versions of LEED have prerequisites for certification. Certification is based upon meeting all of those prerequisites and scoring of additional criteria within a 110 point scale. No verification on-site of actual performance required. Allows minimal interaction with reviewers during process.
- Green Globes has no prerequisites. Criteria are weighted relational to environmental impact/benefit. Certification is based upon scoring of all criteria within a 1000 point scale. Certification process includes on-site visit by a third-party sustainability expert who provides input/feedback and is accessible to the client once assigned.

Green Globes NC and LEED Evaluation Comparison

- Green Globes and LEED cover the evaluation of a wide range of sustainability areas, but there are some differences.
- The tables below compare the areas covered by the evaluation criteria for GG NC, LEED 2009, and LEED v4.

Green Globes New Construction Criteria Comparison to LEED 2009 and LEED v4						
	Criteria Covered?			Notable Differences in Coverage		
Green Globes Assessment Area & Sections	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Project Management						
Integrated Project Management	Yes	Yes	Yes	• Allows flexibility to design individual Integrated Project Management Plan • Encourages the use of a credentialed sustainability expert	• Five unspecified criteria under 'Innovation in Design Process' section – up to 5 credits possible • Credit available for LEED AP in same section.	• Prescriptive criteria must be met • Credit given for use of a LEED Accredited Professional
Construction /Environmental Management	Yes	Yes	Yes	• Overall Plan; specific issues covered in Site	• Pre-requisite for environmental practices/pollution prevention as related to construction (Site)	• Pre-requisite for environmental practices/pollution prevention as related to construction (Site)

Green Globes New Construction Criteria Comparison to LEED 2009 and LEED v4

	Criteria Covered?			Notable Differences in Coverage		
Green Globes Assessment Area & Sections	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Commissioning	Yes	Yes	Yes	- Comprehensive Whole Building Commissioning - Includes O&M documentation	- Includes Basic Commissioning as a prerequisite - Includes Enhanced Commissioning - contains preparation for retro-commissioning	- Includes Basic Commissioning as a prerequisite - Includes Enhanced Commissioning - contains preparation for retro-commissioning
Indoor Air Quality (management practices)	Yes	Yes	Yes	Includes specific major renovation criteria for an occupied building	Construction IAQ & Pre-Occupancy Plan	- Construction IAQ plan - Indoor air quality assessment
Site						
Site/Development Area	Yes	Yes	Yes	Looks at fundamental characteristics of the site, e.g. Greenfield captures farm, undeveloped, parkland, etc.	- Pre-requisite for construction site environmental plan - Looks at fundamental site characteristics as well as development characteristics of the surrounding area	- Pre-requisite for construction site environmental plan - Looks at fundamental site characteristics as well as development characteristics of the surrounding area
Ecological Impacts	Yes	Yes	Yes	Specific Section for Ecological Impacts to handle other areas not included in other sections		
Heat Island Effect	Yes	Yes	Yes			
Bird Collisions	Yes	No	No			
Watershed Features	Yes	Yes	Yes			
Landscaping	Yes	Yes	Yes	Comprehensive coverage	Limited coverage	Limited coverage, but with Habitat Restoration
Exterior Light Pollution	Yes	Yes	Yes	Uses BUG (backlight-uplight-glare) method		Uses BUG (backlight-uplight-glare) method

Green Globes New Construction Criteria Comparison to LEED 2009 and LEED v4

Green Globes Assessment Area & Sections	Criteria Covered?			Notable Differences in Coverage		
	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Energy						
Energy Performance	Yes	Yes	Yes	- Four Paths: ANSI Path A; Energy Star Target Finder; ASHRAE 90.1, Appendix G; ASHRAE bEQ - Additional prescriptive criteria for energy performance (e.g. Building Envelope & Orientation and HVAC Systems and Controls etc.)	- Pre-requisite – Minimum Energy performance - Methods: ASHRAE 90.1 – 2007 or optionally ASHRAE Design Guide	- Pre-requisite – Minimum Energy performance - Three Options: Whole Building Energy Simulation: Cost Savings + Source Energy; Prescriptive Compliance: based on ASHRAE Energy Design Guide – restricted to smaller buildings based on occupancy; Prescriptive Compliance: based on 'Advanced Buildings Core Performance Guide' (C&S only). - Minimum threshold of energy performance design is a prerequisite for certification - Ability to earn energy performance credits within the three options based upon three factors related to project type: whole building, major renovations and core & shell
Energy Demand	Yes	No	Yes	Comprehensive coverage		- Limited to two options: - Demand Response Program - Permanent Peak Load Shifting

Green Globes New Construction Criteria Comparison to LEED 2009 and LEED v4

	Criteria Covered?			Notable Differences in Coverage		
Green Globes Assessment Area & Sections	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Energy Measurement and Verification	Yes	Yes	Yes	- Encourages the use of the Continual Improvement of Existing Buildings (CIEB) program after 18 months of occupancy - CIEB requires 12 months of operational data	Pre-requisite - building level metering	- Pre-requisite - Building level metering - Expectation to provide reconciliation of design versus actual energy performance - Credit for advanced metering
Renewable Energy	Yes	Yes	Yes	On-site includes ground source		- Ground source not included - Off-site renewable energy farms allowed if owned by project
Transportation	Yes	Yes	Yes	Carpooling and walkability		Includes parking reduction and low emitting/fuel efficient vehicles
Water						
Building Water Performance	Yes	Yes	Yes	- Whole building water performance - Additional prescriptive criteria for water performance (e.g. fixture & equipment performance)	- Partial whole building water performance (water use reduction) - Enhanced water use reduction	- Whole building water performance - Two prerequisites: indoor and outdoor water use - Three advanced criteria; one each for landscape; fixture and fitting; appliance and process loads
Alternative Sources of Water	Yes	Yes	Yes	- Wastewater measures include greywater only - Additional measures addressing rainwater, drainwater, HVAC and other process water, backwash water, and treated wastewater	Innovative Water Technologies	Specific wastewater management, rainwater systems and reuse options
Water Metering	Yes	Yes	Yes	Includes benchmarking		Requires minimum metering as prerequisite plus advanced metering for credit.
Landscape and Irrigation	Yes	Yes	Yes	Comprehensive criteria		See building water performance above

Green Globes New Construction Criteria Comparison to LEED 2009 and LEED v4						
	Criteria Covered?			Notable Differences in Coverage		
Green Globes Assessment Area & Sections	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Materials & Resources						
Materials – Building Structural	Yes	Yes	Yes	- Two Paths for material and product selection: - Whole Building Life Cycle Assessment - Multi-Attribute select method	Includes four (4) single attributes	- Whole building life cycle – 4-options including LCA - Criteria requires environmentally preferable materials and products with a focus on a single attribute product selection process - Raw materials sourcing
Materials – Furnishings and Fit-Outs	Yes	Yes	Yes	Specific furnishing and fit outs included	Same as above	- Pilot credit available - refers to “whole building”, meaning the assembly (shell, core, and envelope) - No furnishing and fit-out distinction
Building Reuse; Reused and Salvaged Materials	Yes	Yes	Yes			
Construction/Demo Waste Management	Yes	Yes	Yes			
Building Durability, Adaptability and Disassembly	Yes	No	Yes	Includes performance and Building Life Service Plan		Design for Flexibility
Building Envelope, Roof, Foundation	Yes	No	No	Enhancing building service life		

Green Globes New Construction Criteria Comparison to LEED 2009 and LEED v4

	Criteria Covered?			Notable Differences in Coverage		
Green Globes Assessment Area & Sections	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Emissions and Other Impacts						
Heating	Yes	No	No	- Includes two paths for measuring emissions determined by circumstances of the heating system: - Building Level - District Heating		
Cooling (Refrigerants)	Yes	Yes	Yes	- Incorporated best practices based upon GreenChill covering ODP (Ozone Depleting Potential) and GWP (Global Warming Potential) - Available for use by building types other than Food stores	- Fundamental Management – pre-requisite - Advanced Management credit	- Fundamental Management – pre-requisite - Advanced Management credit - Includes Prescriptive and Performance Options - Requires GreenChill certification for Food stores - Specific District Energy Systems Requirements
Source Control-Asbestos/Radon	Yes	No	No	Asbestos – Major Renovations		
Indoor Environment						
Ventilation	Yes	Yes	Yes	- Comprehensive coverage – ASHRAE 62 - Natural Ventilation - Management plan not included	- Minimum air quality performance – pre-requisite - Credit for Enhanced Air Quality	- Two prerequisites for certification - Minimum Air Quality - IAQ Management Plan - Credit for Enhanced Air Quality
Indoor Pollutants	Yes	Yes	Yes	- Comprehensive pollutant source controls - IAQ - monitoring ventilation intakes, mold and smoking	- Prerequisite to prohibit smoking - Includes pollutant source controls	- Prerequisite to prohibit smoking - Includes pollutant source controls - IAQ monitoring, but does not include mold and ventilation intakes
Lighting Systems	Yes	Yes	Yes		Includes criteria for quality views	Includes criteria for quality views

Green Globes New Construction Criteria Comparison to LEED 2009 and LEED v4						
	Criteria Covered?			Notable Differences in Coverage		
Green Globes Assessment Area & Sections	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Thermal Comfort	Yes	Yes	Yes			
Acoustics	Yes	No	Yes		Not in all BD+C – only Hospital and School modules	

Additional LEED 2009 and LEED v4 Criteria Comparison to Green Globes NC						
	Criteria Covered			Notable Differences in Coverage		
LEED Criteria	GG NC	LEED 2009	LEED v4	Green Globes for New Construction	LEED 2009	LEED v4
Occupant Experience Survey	No	No	Yes			
Regional Priority	No	Yes	Yes	Green Globes includes criteria where points are impacted by regional location.		Criterion is unique and specific to the region of the country the project is located
Innovation	No	Yes	Yes	- Criteria include state of the art, cutting edge technologies, approaches, and best practices - Green Globes assessment process allows for assessors to include innovation if it meets the intent of the criterion.		Optional criteria for credit designed by the user and submitted to GBCI for approval

Assessment: Building Name	Opportunity: Industry	Proj Type	Certification Rating	Cert Score	Cert Date	Dual Cert	LEED Rating
1101 K Street	Professional Services	CIEB	Green Globes: 3 GG	81%	8/21/2017	LEED	Gold
USFS Northern Great Lakes Visitor Center	Government (Federal)	NC I & II	Green Globes: 2 GG	63%	3/1/2017	LEED	Pending
200 Occidental	Real Estate Services	NC I & II	Green Globes: 3 GG	74%	11/22/2016	LEED	Platinum
Stoel Rives Park Avenue West	Professional Services	SI I & II	Green Globes: 4 GG	87.8%	11/14/2016	LEED	Platinum
NASA Marshall Space Flight Center - Building 4220	Government (Federal)	NC I & II	Green Globes: 2 GG	68%	2/12/2016	LEED	Silver
Walgreens - Evanston (#15364)	Retail	NC I & II	Green Globes: 3 GG	72%	9/11/2014	LEED; LBC	Platinum
Vernonia K-12 School	Education (K-12)	NC I & II	Green Globes: 3 GG	71%	8/7/2014	LEED	Platinum
Saint Paul RiverCentre/Xcel Energy Center	Government (State & Local)	CIEB	Green Globes: 3 GG	70%	7/10/2014	LEED	Certified
Internap Secaucus	High Tech	NC I & II	Green Globes: 3 GG	76%	1/24/2014	LEED	Platinum
UM Wye Oak Building	Education (College)	NC I & II	Green Globes: 3 GG	70%	1/8/2014	LEED	Silver
Greenwood Village Tenant Improvement	Professional Services	NC I & II	Green Globes: 2 GG	68%	11/4/2013	LEED	Gold
Hands On Children's Museum	Professional Services	NC I & II	Green Globes: 3 GG	84%	3/18/2013	LEED	Gold
Perot Museum of Nature & Science	Other	NC I & II	Green Globes: 4 GG	85%	11/29/2012	LEED	Gold
Internap Redondo Beach (Los Angeles)	High Tech	NC I & II	Green Globes: 2 GG	62%	10/24/2012	LEED	Gold
SJS Prairie Med / Abbott	Real Estate Services	NC I & II	Green Globes: 3 GG	75%	7/10/2012	LEED	Silver
Drexel University - Papadakis Integrated Sciences Building	Education (College)	NC I & II	Green Globes: 3 GG	84%	12/28/2011	LEED	Silver
Internap Dallas	High Tech	NC I & II	Green Globes: 2 GG	66%	12/28/2011	LEED	Gold
Stanley J. Roszkowski U.S. Courthouse	Government (Federal)	NC I & II	Green Globes: 3 GG	81%	12/5/2011	LEED	Gold
Internap Santa Clara	High Tech	NC I & II	Green Globes: 2 GG	56%	4/19/2011	LEED	Silver
Jacob Weinberger Courthouse	Government (Federal)	CIEB	Green Globes: 4 GG	90%	9/15/2010	LEED	Gold
Robert A. Grant Federal Building & Courthouse	Government (Federal)	CIEB	Green Globes: 4 GG	86%	8/15/2009	LEED	Silver
ASU Walter Cronkite School of Journalism	Professional Services	NC I & II	Green Globes: 2 GG	69%	8/3/2009	LEED	Silver
Hammond Federal Courthouse	Government (Federal)	CIEB	Green Globes: 3 GG	83%	7/15/2009	LEED	Silver

Alberici Headquarters	Real Estate Services	NC I & II	Green Globes: 4 GG	93%	12/31/2006	LEED	Platinum
William J. Clinton Presidential Center	Other	NC I & II	Green Globes: 2 GG	68%	12/31/2006	LEED	Platinum
Wisc Electrical Emp Benefit Fund Office Building	Utilities	NC I & II	Green Globes: 2 GG	55%	10/3/2006	LEED	Certified
Dual Certified Buildings							
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The Green Building Initiative							



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February 3, 2019

Ms. Stephanie Free
Urban Planner III
City of Alexandria
301 King Street
Alexandria, Virginia 22314

RE: Green Building Policy Dated January 2019

Dear Ms. Free:

I am sending this letter to extend my congratulations to the City of Alexandria for considering such an impressive policy to make your City greener and more sustainable while helping to reduce carbon in our atmosphere, one of the greatest challenges of our lifetime. Your City has established itself as a leader with this move and I wish you every success.

I have worked on many green building projects across the country over the past 19 years and understand that you are seeking feedback on how green building rating systems can be used to enhance your efforts. I respectfully submit this letter to you in the hopes that you can find my experience helpful in achieving your goals.

I attended the first annual meeting of USBGC in 1994, worked on one of the first pilot LEED Version 1.0 projects in 2000, and since then have worked on projects seeking certification under LEED Versions 2.0, 2.2, 3.0 (2009), and now 4.0 projects. In total, I have worked on over 50 LEED projects with six of those receiving LEED Platinum Awards. On most of these projects, I served as the Commissioning Authority and on many of them I also served as the LEED Supervisor, primarily responsible for developing the required paperwork and calculations, and uploading all required information to the LEED website. These projects include a hospital, office buildings, manufacturing facilities, schools, a bank, training facilities, retail facilities, and a clinic.

I was introduced to Green Globes 14 years ago and was asked, by the State of Wisconsin, to evaluate and compare LEED to Green Globes. I reviewed the Green Globes system and worked on three projects that became dual-certified through both rating systems. In my conclusion to the State of Wisconsin, I recommended Green Globes as an excellent alternate to LEED. Since then, I have worked on over 100 Green Globes projects for new construction, existing building, core and shell, sustainable interiors, and guiding principles. These projects include most commercial building types including medical facilities, office buildings, multifamily buildings, retail facilities, manufacturing facilities, banks, warehouses, recreational centers, schools, university facilities, a mass transit facility and a power plant.

I found Green Globes to be technically equal to LEED while having the benefits of being faster to implement, less expensive, and providing a better product for users. The key to these benefits is the use of an assigned Assessor as opposed to the LEED rating system which relies on remote reviews of paperwork submittals and calculations. Although LEED was first to market in the United States, it has faced many challenges in establishing market acceptance. To date, fewer than 1% of the United States commercial building inventory is in the LEED system and the most recent release of LEED, Version 4, has seen very little (almost insignificant) market penetration. LEED's complexity and reliance on remote reviewers has been a major detractor for widespread user acceptance. Furthermore, the remote reviewer never sees the building and has no way of verifying that what is in the design made its way into the construction of the building.

The path that too many designers and contractors have taken, many driven by their frustration with LEED, has been to claim they provide "LEED certifiable buildings" or "buildings that follow the LEED checklist". During my career I have toured many of these buildings and found they were no different than other buildings constructed using nothing more than standard practice.

Green Globes and LEED use the same building science and references; however, the Green Globes approach uses an Assessor, an experience professional who works with the design and construction teams and walks through the building after it is complete. This approach significantly reduces the amount of paperwork required and, I believe, increases accuracy as it catches last minute value engineering decisions that can make or break a good green building.

In conclusion, I congratulate you on putting an emphasis on third-party certification of green buildings and encourage you to allow users a choice of LEED or Green Globes as having equivalent standing in your policy.

Please contact me at 608-332-8444 or eric@greenbuildingresourcesonline.com if you have any questions and thank you for your leadership.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eric T. Truelove". The signature is fluid and cursive, with the first name "Eric" and last name "Truelove" clearly distinguishable.

Eric T. Truelove, PE, GGA, LEED AP BD&C
Principal
Green Building Resources LLC

Comparing Green Globes & LEED

Program Features	Green Globes	LEED
Has completed an American National Standard using ANSI-approved consensus process	YES	NO
Nationally Accepted Program	YES	YES
Program Delivery	Online, Interactive survey	Online submission of forms
1-on-1 Customer Support	YES	NO
New Construction Assessment	YES	YES
Existing Building Assessment	YES	YES
Core & Shell	YES	YES
Tenant Fitout	YES	YES
Total Program Points	1,000	110 plus prerequisites
Minimum Points Required for Certification	YES	YES
Weighted Criteria & Partial Credit	YES	Limited
Program Prerequisites	NO	YES
Flexibility for Non-Applicable Criteria	YES	NO
Energy Performance (New Construction)	Four pathways for assessing energy performance, including benchmarking to Energy Star	Benchmarks against hypothetical building model
Incorporates Life Cycle Assessment (LCA)	YES	YES
On-site Building Walk Through with Expert Assessor	YES	NO
Support from Certifying Agency	Green Globes provides an experienced Assessor who is either AIA, PE or experienced Facility Manager	LEED assigns a non-technical support person to help the user navigate through the LEED online system
Communication with Certifying Agency	Project teams can communicate with GBI's Chief Engineer and Project Managers and third-party Green Globes Assessor	LEED does not allow direct contact with technical reviewers unless you are in a disagreement during appeals which occur after the "final" score is delivered
Sustainability Recommendation with Customized Reports	YES	NO
Certification Process	Preliminary Design assessment followed by third-party Assessor on-site assessment	Complete and submit assessment form, wait for results
Certification Rating System	Four Green Globes, Three Green Globes, Two Green Globes, One Green Globes	LEED Platinum, LEED Gold, LEED Silver, Certified LEED
Certification Personnel Training Program	Green Globes Professional (GGP)	LEED AP
Time to Complete Certification	Green Globes can be completed within 30 days of building occupancy	Delays have been noted between 6-24 months with added costs for appeals and interpretations
Cost to Certify a Typical Building >100,000 sq ft	\$	\$\$\$
Certification Success Rate	The failure rate is negligible because the Green Globes process is collaborative, transparent and results driven, by way of online evaluations, detailed reports and third-party assessors	LEED's failure rate is high based on buildings that register and do not achieve certification

Rules and Regulations

Federal Register

Vol. 79, No. 198

Tuesday, October 14, 2014

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Parts 433, 435 and 436

[Docket No. EE-RM/STD-02-112]

RIN 1904-AC13

Green Building Certification Systems for Federal Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) issues a final rule that implements a provision in the Energy Conservation and Production Act, as amended by the Energy Independence and Security Act of 2007, which requires DOE to identify a green building certification system and level that DOE determines to be the most likely to encourage a comprehensive and environmentally-sound approach to certification of green buildings. DOE's green building certification system review must be based on the General Services Administration's review of third-party green building certification systems and levels and criteria outlined in the Energy Independence and Security Act of 2007. Under the regulations established today, if a Federal agency chooses to use a green building certification system for a new building or major renovation covered by today's rule, the green building certification system for Federal buildings must meet the certification standards established in today's rule.

DATES: This rule is effective November 13, 2014. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register on November 13, 2014.

ADDRESSES: This rulemaking can be identified by docket number EE-RM/STD-02-112 and or RIN number 1904-AC13.

Docket: The docket is available for review at <http://www.regulations.gov> including **Federal Register** Notices, public meeting attendee lists, transcripts, comments and other supporting documents/materials. All documents in the docket are listed in the <http://www.regulations.gov> index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

For further information on how to review materials in the docket, contact Ms. Brenda Edwards at (202) 586-2945 or email Brenda.Edwards@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Sarah Jensen, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, EE-5F, 1000 Independence Avenue SW., Washington, DC 20585-0121, (202) 287-6033, email: sarah.jensen@ee.doe.gov. For legal issues, contact Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5709, email: ami.grace-tardy@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

Section 305 of the Energy Conservation and Production Act (ECPA; Pub. L. 94-385) established energy conservation requirements for Federal buildings. (42 U.S.C. 6834) Section 433(a) of the Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110-140) amended section 305 of ECPA to require, among other things, DOE to identify a green certification system and level for rating Federal buildings that DOE determines to be the most likely to encourage a comprehensive and environmentally sound approach to such certification and rating. (42 U.S.C. 6834(a)(3)(D)(i)(III)) Section 433 of EISA

2007 also revised the definition of "Federal building" applicable to the regulations for Federal buildings. (42 U.S.C. 6832(6)).

DOE's green building certification system review must be based on the General Services Administration's (GSA) review of third-party green building certification systems and other criteria outlined in EISA 2007, including: The ability and availability of assessors and auditors to independently verify the criteria and metrics; the ability of the applicable certification organization to collect and reflect public comment; the ability of the standard to be developed and revised through a consensus-based process; and an evaluation of the robustness of the criteria for a high-performance green building; national recognition within the building industry (42 U.S.C. 6834(a)(3)(D)(iii)).

As required under EISA 2007, at least once every five years, GSA must conduct a study to evaluate third-party green building certification systems and levels taking into consideration these same criteria. (42 U.S.C. 6834(a)(3)(D)(iv)) After completion of each study, DOE must review and update its recommended certification systems and levels, taking into account GSA's evaluation. (42 U.S.C. 6834(a)(3)(D)(i)(III)) By rule, DOE also may allow Federal agencies to develop their own internal certification processes. (42 U.S.C. 6834(a)(3)(D)(v)).

As required by Section 436(h) of EISA 2007, in 2008 GSA identified the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Silver as a green building certification system and level that meets the criteria expressly identified in the statute. In the 2011 sustainable design notice of proposed rulemaking ("sustainable design NOPR") DOE requested comment on other green rating systems and associated levels/points that also would meet the statutory criteria. See 75 FR 29933, 29938-39 (May 28, 2010).

On October 25, 2013, the GSA Administrator sent his latest green building certification system evaluation to DOE.¹ The Administrator

¹ Letter from Daniel Tangherlini, GSA Administrator, to Ernest Moniz, Secretary of Energy, dated October 25, 2013. Letter and all supporting material may be found on GSA's Web site at <http://www.gsa.gov/portal/content/131983>.

recommended that Federal agencies utilize the 2009 LEED² or the Green Building Initiative's Green Globes 2010³ certification system. For new construction and major renovations, GSA recommended that Federal agencies obtain at least a LEED Silver rating, or, if using Green Globes, at least 2 Green Globes.

Today's rule updates the Federal energy efficiency standards by adding criteria that green building rating systems must meet. Federal agencies are not required to use a green building rating system, but if they choose to do so, the systems must meet these criteria. The Federal commercial and multi-family high-rise residential energy efficiency standards are contained in 10 CFR part 433. The Federal low-rise residential energy efficiency standards are contained in 10 CFR part 435. Today's rule adds the green building certification criteria for both 10 CFR part 433 and 10 CFR part 435. Today's rule also reorganizes and renumbers existing text in these parts to accommodate the addition of the provisions regarding green building certification systems for Federal buildings.

B. Summary of the Final Rule

In May 2010, DOE published a notice of proposed rulemaking (NOPR) that addressed the use of sustainable design principles for the siting, design, and construction of Federal buildings, and the use of water conservation technologies to achieve energy efficiency. This proposed rulemaking also provides criteria for identifying a certification system and level for green buildings that encourages a comprehensive and environmentally-sound approach to certification of green buildings. 75 FR 29933. Today's rule finalizes only the provisions of the NOPR that pertained to green building certification systems. DOE is continuing to assess the sustainable design principles in the NOPR in light of an ongoing process to revise the 2008 Guiding Principles for High Performance and Sustainable Buildings: New Construction and Major Renovations (Guiding Principles), which served as a basis for those provisions of the NOPR.

DOE recognizes the degree to which EISA 2007 requirements for Federal agencies to incorporate sustainable design principles into new construction and major renovations overlap with

standing Executive Order requirements that agencies maintain specific sustainable building standards. Executive Orders 13423 and 13514 require that all new Federal construction and major renovations comply with the Guiding Principles. Although using a green building certification system is optional, DOE recognizes that many agencies use green building certification systems to assist them in supporting efforts to comply with the Guiding Principles.

Under today's rule, if an agency chooses to use a green building certification system, agencies must choose a green building certification system that meets certain criteria as discussed below and agencies are encouraged to take into consideration GSA's set of recommendations. DOE made one change to the "green building certification system" criteria from the NOPR by requiring a verification system for post-occupancy assessment of the rated buildings to demonstrate continued energy and water savings at least every four years after initial occupancy.

This rule applies to certain new Federal buildings, and major renovations to Federal buildings, for which design for construction began on or after October 14, 2015. The new Federal buildings, and major renovations to Federal buildings covered by today's rule are covered by EISA 2007 and include new Federal buildings, or major renovations to Federal buildings, that are also: (1) Public buildings, as defined in 40 U.S.C. 3301 for which a transmittal of a prospectus to Congress is required under 40 U.S.C. 3307; or (2) Federal buildings for which the construction cost or major renovation cost is at least \$2,500,000 (2007 dollars, adjusted for inflation). The term "Federal building" means any building to be constructed by, or for the use of, any Federal agency. The term includes buildings built for the purpose of being leased by a Federal agency, and privatized military housing. (42 U.S.C. 6832)

II. Discussion of Comments and Changes to the Final Rule

DOE received a wide variety of comments from 62 different entities in response to the sustainable design NOPR. All of the 62 comments supported the general premise of this rule to improve sustainability in Federal buildings. All public comments are available for review on the regulations.gov Web site under Docket Number DOE-EERE-OT-2010-0007. Comments that are directly pertinent to the green building certification system

portion of the rule are discussed and addressed in greater detail below.

A. Scope

Leased Buildings

EISA 2007 modified the ECPA definition of "Federal building" to apply to "any building to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing." (42 U.S.C. 6832(6)) In the NOPR, DOE requested comments on the proposed definition of "new Federal building" (based on the statutory "Federal building" definition) and on limiting the inclusion of leased buildings in the definition of "Federal building" to new leased buildings in which a Federal agency has significant control over the design of the building (e.g., "lease-constructs"). 75 FR 29934.

Several commenters, including Indian Health Services (IHS) and the U.S. Green Building Council (USGBC), agreed with DOE's proposal to limit the coverage of leased buildings to those in which a Federal agency has "significant control" over building design. (IHS, No. 45 at p. 1⁴; Green Mechanical Council (GMC), No. 60 at p. 5) Several comments suggested that the rule should apply to all buildings that the government leases, including buildings that the Federal agency does not have "significant control" over building design. (Kaplow, No. 6 at p. 1; U.S. Fuel Cell Council, No. 13 at p. 2; National Electrical Manufacturers Association (NEMA), No. 36 at p. 3; Solar Energy Industries Association (SEIA), No. 58 at pp. 2–3; Natural Resources Defense Council (NRDC), No. 64 at pp. 3–4; Earthjustice, No. 71 at p. 9) DOE has not expressly added the "significant control" restriction to the rule for leased buildings because the ECPA definition of "Federal building" includes the limitation of buildings that are built specifically for the Federal government. Construction design for a building built specifically for use of the Federal government, including under lease to a Federal agency, is, presumably, under the significant control of the Federal owner or Federal lessee. U.S. General Services Administration (GSA) recommended adding rule language stating that leased buildings include

⁴ Notations of this form appear throughout this document and identify statements made in written comments or at public hearings that DOE has received and has included in the docket for this rulemaking. For example, "IHS, No. 45 at p. 1" refers to a comment: (1) From Indian Health Services; (2) in document number 45 in the docket of this rulemaking; and (3) appearing on page 1 of the submission.

² LEED information is available at <http://www.usgbc.org/leed>.

³ Green Globes information is available at <http://www.thegbi.org/green-globes/>.

projects “in which the government initiates the solicitation of bids expressly for the construction of a building or facility to meet a Federal agency need.” (GSA, No. 72 at p. 5) DOE agrees that GSA’s proposed clarification reflects ECPA, but DOE does not believe that GSA’s language need be included in today’s rule as the rule specifies that it applies to buildings built for the purposes of being leased by a Federal agency.

Covered Buildings

NRDC and Earthjustice commented that DOE’s interpretation of the scope of buildings covered under statutory requirements at 42 U.S.C. 6834(a)(3)(D)(i) is incorrect. (NRDC, No. 64 at p. 3; Earthjustice, No. 71 at pp. 7–9) These commenters believe that the limiting criteria in 42 U.S.C. 6834(a)(3)(D)(i)⁵ apply only to “major renovations” and not to new buildings. DOE believes that this is an incorrect interpretation of the statute for several reasons. The first phrase set-off in commas (starting with “with respect to which”) reasonably modifies the previous phrase referring to both new Federal buildings and those undergoing major renovations. The second phrase set-off in commas (starting with “in the case of public buildings”) reasonably characterizes the first phrase. The third phrase (starting with “or of at least \$2,500,000”) and the “or” that begins the phrase indicate that the first and second phrases are one factor to apply to the subset of buildings at issue and the third phrase is another factor to apply to this subset of buildings. Moreover, if the commenters’ interpretation that the limiting factors only apply to major renovations was correct, then other sections of ECPA would be without meaning. Specifically, Congress amended ECPA and set sustainable design requirements for new Federal buildings, if life-cycle cost-effective, under EPACT 2005. (See 42 U.S.C. 6834(a)(3)(A)(i)(II)). Then, in EISA 2007, Congress amended ECPA again, to apply sustainable design requirements to a subset of new Federal buildings or major renovations, without regard to life-cycle-cost-effectiveness. (See 42 U.S.C. 6834(a)(3)(D)(i)). If the EISA 2007 amendments applied to all new Federal buildings, as commenters

suggest, then the EPACT 2005 provisions would be meaningless. While Congress could have rescinded the earlier EPACT 2005 sustainable design provisions, it chose not to and, therefore, DOE’s interpretation that 42 U.S.C. 6834(D)(i) only applies to a subset of Federal buildings is reasonable.

In the final rule, DOE removed the second EISA 2007 condition, “public buildings” (as defined at 40 U.S.C. 3301) for which a prospectus is required from Congress, from the scope of coverage for low-rise residential buildings. The definition of “public building” at 40 U.S.C. 3301 exempts buildings and construction projects that are on or used in connection with housing and residential projects. (See 40 U.S.C. 3301(a)(5)(C)(vi)) Therefore, EISA-covered low-rise residential buildings only include those buildings with construction costs of at least \$2.5 million.

Compliance Date of Rule

DOE received a number of comments on the compliance date proposed in the NOPR. This compliance date is consistent with the compliance date that DOE has used for baseline Federal building energy efficiency standards at 10 CFR parts 433 and 435 for several years. Under 10 CFR parts 433 and 435, “design for construction” means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification. Agencies that have already programmed or budgeted for building construction before the publication of today’s rule likely have not included the costs of complying with the requirements of this rule. To apply the rule to these buildings would likely impose unanticipated costs that could compromise important functional aspects of the building or agency mission. Applying the rule to buildings for which design for construction begins one year after publication of the final rule helps ensure that agencies can anticipate and incorporate the cost of meeting this rule in the construction budget or make other necessary adjustments.

Overseas Facilities

Comments received on the Fossil Fuel Reduction Notice of Proposed Rulemaking (“fossil fuel reduction NOPR”) (75 FR 63404) (October 15, 2010) asked about application of the rule to overseas facilities where the agency does not have complete control over building design, and these

comments are equally applicable to today’s final rule. DOE recognizes that several agencies have buildings overseas and these buildings may be subject to a variety of legal authorities specific to that agency. For example, DOD commented that an agency may not have complete control over the design of a new or renovated building or may face technical challenges in meeting the proposed rule in overseas locations.⁶ Today’s final rule does not expressly address the extent to which it may be applicable to buildings overseas as each individual agency is best positioned to understand the various and sometimes unique authorities that may be applicable to overseas buildings of that agency. However, today’s rule applies to overseas facilities to the extent the requirements are consistent with applicable law.

Privatized Military Housing

A public comment on a related DOE rulemaking that also proposed to amend 10 CFR Parts 433 and 435, “Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings” (75 FR 63404) (October 15, 2010), stated that DOE needed to clarify whether the rule applies to privatized military housing. EISA 2007 modified the ECPA definition of “Federal building” to apply to “any building to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing.” (42 U.S.C. 6832(5)) In addition, Congress again mentioned privatized military housing in EISA 2007 when it specified that, “with respect to privatized military housing, the Secretary of Defense, after consultation with the Secretary [of Energy] may, through rulemaking, develop alternative criteria to those established in subclauses (I) [fossil fuel reduction requirements] and (III) [sustainable design requirements] of clause (i).” (42 U.S.C. 6834(a)(3)(D)(vi)) With respect to EISA-covered buildings, privatized military housing may not meet the definition of “public building” at 40 U.S.C. 3301(a)(5), but privatized military housing with construction costs of at least \$2.5 million would be EISA-covered buildings.

Application of \$2.5 Million Threshold on a Per Building Basis

Sunovation encouraged DOE to clarify that multi-unit residential projects under a single contract should

⁵ Under ECPA, as amended, today’s rule applies to the following EISA-covered buildings: “New Federal buildings and Federal buildings undergoing major renovations, with respect to which the Administrator of General Services is required to transmit a prospectus to Congress under section 3307 of Title 40, in the case of public buildings (as defined in section 3301 of Title 40), or of at least \$2,500,000 in costs adjusted annually for inflation for other buildings,” (42 U.S.C. 6834(a)(3)(D)(i)).

⁶ DOD–N, No. 25B at p. 8, Docket No. EERE–2010–BT–STD–0031.

be considered jointly when determining whether the \$2.5 million threshold is met, as opposed to applying the \$2.5 million threshold per building. (Sunnovation, No. 28 at p. 2) The cost threshold applies on a per building basis. EISA 2007 sets requirements for “new Federal buildings and Federal buildings undergoing major renovations.” (See 42 U.S.C. 6834(a)(3)(D)(i)(I)) Nothing in the statute states that this threshold applies across multiple buildings that are part of one project.

B. Green Building Certification

Compliance With Other Requirements

DOE requested comments as to whether the minimum allowable level for green building rating systems should comply with the Guiding Principles and all applicable executive orders. 75 FR 29939. The DOI stated that “If federal buildings, however, are designed, built, and perform in accordance with legislative mandates, the Guiding Principles, and all applicable executive orders, they are inherently green buildings . . . Seeking an additional green building rating is redundant.” (DOI, No. 44 at p. 7) GSA commented that it should not be necessary to mandate minimum rating levels. (GSA, No. 72 at p. 12) As today’s rule explicitly states, DOE is not requiring Federal agencies to use a green building certification system. Federal agencies may wish to use a green building rating system as a tool to help them meet the Guiding Principles or their own internal sustainability goals, although agencies are not required to use such a system. DOE encourages Federal agencies to consider GSA’s 2013 recommendations when choosing a green building certification system.⁷ DOE notes that under Executive Orders 13423 and 13514, Federal agencies are already required to ensure that new construction and major renovations of agency buildings comply with the Guiding Principles. In today’s rule, DOE requires that agencies should select a green building certification system that meets the prescribed criteria and a level of certification that promotes attainment of the Guiding Principles.

Independent Third-Party Verification

GSA said that DOE needs to clarify the concept of third-party verification of green building rating systems. (GSA, No. 72 at p. 12) DOE notes that the rule, based on the statutory requirement at 42 U.S.C. 6834(a)(3)(D)(iii), requires that

the system under which the building is certified must allow assessors and auditors to independently verify the criteria and measurement metrics of the system. To independently verify the criteria and measurement metrics, assessors and auditors must be free from bias (financial or otherwise) when they evaluate a building for compliance with a green rating system. Federal agencies seeking certification from a green building rating system cannot assert that assessors and auditors employed by the agency are independent. DOE notes that Federal agencies that use a green building rating system do not have to use assessors and auditors, but must ensure that the green building rating system that it chooses allows for independent verification from assessors and auditors.

Choosing a Green Building Certification System

As required by Section 436(h) of EISA 2007, in 2008 GSA identified LEED Silver as a green rating system and level that meets the criteria expressly identified in the statute. DOE requested comment on other green rating systems and associated levels/points that also would meet the statutory criteria. 75 FR 29939. Subsequently, on October 25, 2013, GSA recommended that Federal agencies achieve at least a Silver rating from LEED or 2 Green Globes from the Green Building Initiative for new construction and/or major renovations in order to meet the statutory criteria.⁸

GBI asked that DOE recognize GBI’s Green Globes as a certification system that meets all of the criteria called for in the NOPR, noting that Federal agencies should achieve Two Green Globes for compliance with the rule. (GBI, No. 25 at p. 7) There were many comments expressing support for the Green Globes rating system. (Duro-Last Roofing, No. 3 at p. 1; Arch Wood Protection, No. 7 at p. 1; Plastic Pipe and Fitting Association, No. 9 at p. 2; Iowa Department of Public Safety, No. 18 at p. 2; the FVA, No. 21 at p. 1; the NACGB, No. 24 at p. 3; the Sustainable Forest Initiative, No. 26 at pp. 1–2, the Hardwood Foundation, No. 27 at p. 4, The Sika Corporation, No. 42 at p. 1; Greenguard Environmental Institute, No. 46 at p. 5; the Sustainable Forestry Initiative, No. 52 at p. 2; AF&PA/AWC, No. 59 at p. 6; the American Forest Foundation, No. 61 at p. 3; and the RFCI, No. 63 at p. 7) Many of the supporters of Green Globes stressed that the system was ANSI-certified and

considered ANSI certification to be important. DOE is aware that neither Green Globes nor LEED is an ANSI-certified system. Also, as GSA noted in its review of the main commercial green building rating systems, neither system fully aligned with Federal sustainable building requirements.

Others recommended that the LEED system be approved for use in Federal buildings. (USGBC, No. 60 at p. 8; Stuart D. Kaplow, No. 6 at p. 2; GSA Region 8, No. 33 at p. 4; Iowa Department of Public Safety, No. 18 at p. 1; NEMA, No. 36 at p. 6; IHS, No. 45 at p. 3; Greenguard Environmental Institute, No. 46 at p. 5; SEIU, No. 67 at p. 2; GSA, No. 72 at p. 14) Weyerhaeuser opposed the endorsement of LEED, mentioning LEED is not ANSI-certified. (Weyerhaeuser, No. 62 at p. 4) A substantial number of comments addressing forestry and wood certification considerations expressed opposition to how the USGBC LEED rating system addresses certified wood products and questioned whether LEED is developed via a consensus-based process. (AWC No. 22 at p. 4; SFI, No. 26 at p. 2; Hardwood Federation No. 51 at p. 2; AF&PA/AWC, No. 59 at p. 8; the American Forest Foundation, No. 61 at p. 3; Weyerhaeuser, No. 62 at pp. 3–4) LEED is not developed by the Federal government and, therefore, DOE cannot comment on the content of their rating system. The National Park Service recommended allowing other rating systems to be used, not just the USGBC LEED system. (NPS, No. 20 at p. 1)

NEMA advocated that a separate energy specific rating system such as ENERGY STAR Buildings be mandated. (NEMA, No. 36 at p. 6) The Sustainable Forestry Initiative expressed support for Built Green Canada. (SFI, No. 52 at p. 2) ASHRAE suggested that ASHRAE’s Building Energy Quotient (Building EQ) labeling program may meet DOE’s green building certification needs. (ASHRAE, No. 30 at p. 6) AGA expressed support for Green Globes, LEED, and Building EQ, the International Green Construction Code, and ASHRAE Standard 189.1–2009. (AGA, No. 50 at p. 2)

For residential buildings, a number of commenters expressed support for the NAHB and ICC’s National Green Building Standard ICC–700–2008. (Plastic Pipe and Fittings Association, No. 9 at p. 2; ICC, No. 31 at p. 2; IHS, No. 45 at p. 3, Sustainable Forest Initiative, No. 52 at p. 2; NAHB, No. 55 at p. 2, and the RFCI, No. 63 at p. 5)

DOE received numerous comments opposing and numerous comments supporting DOE choosing one or several green building certification systems that

⁷ Letter and all supporting material may be found on GSA’s Web site at <http://www.gsa.gov/portal/content/131983>.

⁸ Letter from Daniel Tangherlini, GSA Administrator, to Ernest Moniz, Secretary of Energy, dated October 25, 2013.

meet the requirements in the sustainable design NOPR. The Society of the Plastics Industry and several other commenters expressed support for allowing flexibility for agencies in choosing a green building rating system. (SPI, No. 38 at p. 1) Many public comments from supporters of Green Globes commended this approach because it allows agencies options for using systems tailored to their needs. (AWC, No. 22 at p. 3; The Vinyl Institute, No. 23 at p. 1; NACGB, No. 24 at p. 2; Sustainable Forest Initiative, No. 26 at p. 2). Several commenters, including the RFCI and the NACGB, recommended that DOE determine which green rating systems are acceptable for use for Federal buildings. (RFCI, No. 63 at p. 10; NACGB, No. 65 at p. 6)

DOE is not approving by this rule any specific green building rating systems for use in new Federal buildings and major renovations. Instead, DOE is specifying in regulation criteria for determining acceptable green building rating systems to allow agencies flexibility in choosing a rating system, including the possibility of using new or improved rating systems that are not currently available or known. In this way, DOE is allowing Federal agencies to use the system most appropriate for their buildings. Any rating system complying with the criteria outlined in today's rule shall be permitted. DOE also encourages Federal agencies to consider GSA's 2013 green building certification system recommendations. In addition, after the GSA Office of High Performance Green Federal Buildings completes its next analysis of green rating systems as required by EISA 2007 Section 436(h), DOE will review GSA's results and may seek to amend the criteria established in today's rule.

One commenter asked what is meant by the phrase "consensus process" in the rule. (Myers, No. 53 at p. 2) For purposes of today's rule, DOE clarifies that a "consensus-based" process is a group decision-making process that seeks not only the agreement of most participants, but also the resolution or mitigation of minority objections.

NEMA recommended that DOE consider the use of existing certification systems that address occupied buildings and make any additional criteria of importance known to the certification bodies. (NEMA, No. 36 at p. 6) NAVFAC stated DOE should provide additional alternatives for verifying post-occupancy the continued energy and environmental performance of new and renovated buildings. (NAVFAC, No. 47 at p. 8) The final rule requires that the certification system include a

verification system to demonstrate continued energy and water savings at least every four years after initial occupancy. Requiring the demonstration every four years will make the frequency consistent with other Federal building audit cycles such as the energy and water evaluations required under EISA Section 432.

Internal Certification Process

ECPA gives DOE the option of including a section in the rulemaking that would permit Federal agencies to develop internal green building certification processes to rate their buildings. (42 U.S.C. 6834(a)(3)(D)(v)) The NOPR proposed allowing agencies to request DOE approval of internal green building certification processes. GSA commented that agencies should not be allowed to self-certify buildings through an internal green building certification process. (GSA, No. 72 at p. 12) DOI asked for clarification regarding whether the DOI Sustainable Building Assessment and Compliance Tool or the ENERGY STAR Portfolio Manager are considered internal green building rating systems. (DOI, No. 44 at p. 6) In the final rule, DOE has not included provisions on internal green building rating systems as contained in the proposed rule because DOE's decision to allow agencies to use any green building rating system that meets the criteria in today's rule makes this provision unnecessary. In addition, regardless of any regulatory text, under today's rule, Federal agencies that choose not to use green building rating system, such as LEED or Green Globes, can use any appropriate, internal system to ensure that any new Federal buildings or major renovations of Federal buildings meet the requirements in today's rule.

Effect on State and Local Governments

NAHB expressed concern that "today's mandates for federal buildings will morph into requirements for private development" because many state and local governments shadow Federal rulemakings. (NAHB, no. 55 at p. 5) DOE notes NAHB's concern, but the Federal government has a statutory obligation to lead by example. (See 42 U.S.C. 6831) State and local governments and private entities have no obligation to adopt any elements of today's rule.

Codifying EISA Life-Cycle Limit

Additionally, today's final rule amends the life-cycle analysis provisions established in 10 CFR part 436 subpart A. Section 544 of the National Energy Conservation Policy

Act (NECPA) directed DOE to establish practical and effective present value methods for estimating and comparing life-cycle costs for Federal buildings, based on capital and operating costs during a period of the expected life of the building's energy system or 25 years, whichever is shorter. DOE established life-cycle cost analyses methodologies and procedures in 10 CFR part 436 subpart A. Section 441 of EISA 2007 amended section 544 of NECPA by replacing the 25 year limit with a 40 year limit. (See, 42 U.S.C. 8254(a)(1)) Today's final rule amends the life-cycle costs analyses regulations to reflect the statutory change. Because the amendment to part 436 involves a nondiscretionary changes, the Department finds that public notice and comment are unnecessary pursuant to 5 U.S.C. 553(b)(B).

III. Regulatory Analyses

A. Review Under Executive Order 12866 and 13563

Today's final rule is a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). OMB has completed its review. DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (January 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866.

DOE expects that Federal building construction costs will increase as a result of this rule and the cost increase will vary from project to project. A 2004 study commissioned by GSA entitled *GSA LEED Cost Study* estimates that a Gold certification under the LEED rating system will increase the cost of a mid-rise Federal courthouse or office building by 1.4% to 8.1%.⁹

Given that green building certification for Federal buildings is voluntary, DOE can only make assumptions about the amount of Federal agency participation and costs that such a certification might entail. The cost impact for any building will vary depending upon the level of green building certification being pursued, the square footage of the building and the degree of service the agency expects from a certification body such as LEED or Green Globes in order to review the design of the building.

⁹ See <https://www.wbdg.org/ccb/GSAMAN/gsaleed.pdf>.

Existing Federal requirements mandate that construction of new Federal buildings be at a level of performance that meets the current ASHRAE or IECC specification, or 30% beyond the current ASHRAE or IECC specification, if life-cycle cost effective. Any added costs incurred associated with this rulemaking due to the agency voluntarily certifying that building as meeting a green building rating system will likely be as a result of the process of seeking and obtaining that certification.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). The Department has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's rulemaking applies only to the design and construction of new Federal buildings and major renovation to Federal buildings. As such, the only entities directly regulated by this rulemaking would be Federal agencies. DOE does not believe that there will be any impacts on small entities such as small businesses, small organizations, or small governmental jurisdictions.

On the basis of the foregoing, DOE certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. DOE received no comments on the impact of the proposed rule on small entities. As a result, DOE has adopted the prior certification without change.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the

Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE prepared an Environmental Assessment (EA) entitled, 10 CFR 433, "Energy Efficiency Standards for the Design and Construction of New Federal Commercial and Multi-Family High-Rise Residential Buildings" and 10 CFR 435, "Energy Efficiency Standards for the Design and Construction of New Federal Residential Low-Rise Residential Buildings" pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

The EA addresses the possible environmental effects attributable to the implementation of the final rule. Under today's rule, if an agency chooses to use a green building certification system to certify its buildings for any purpose, the chosen green building certification system must meet certain criteria established by the rule. The rule is not expected to cause any adverse health effects, and thus would have no environmental justice impacts affecting low-income or minority populations. The rule would not have an adverse effect on historic or archaeological sites, and would not be affected by a terrorist act. The rule will have no significant impact on sensitive environmental resources, including wetlands/floodplains, prime agricultural lands, endangered species, and sensitive ecosystems. Therefore, DOE has issued a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021).

E. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies

to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735) DOE examined this rule and determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory

actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <http://www.gc.doe.gov>). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630, “Governmental Actions and Interference With Constitutionally Protected Property Rights”

The Department has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today’s final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

10 CFR Parts 433 and 435

Buildings and facilities, Energy conservation, Engineers, Federal buildings and facilities, Housing, Incorporation by reference, Sustainable design.

10 CFR Part 436

Energy conservation, Federal buildings and facilities, Reporting and recordkeeping, Requirements, Solar energy.

Issued in Washington, DC, on October 3, 2014.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set out in the preamble, the Department of Energy amends chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 433—ENERGY EFFICIENCY STANDARDS FOR THE DESIGN AND CONSTRUCTION OF NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

■ 1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 7101 *et seq.*

■ 2. Revise the part heading for part 433 as set forth above.

■ 3. In § 433.1:

■ a. Redesignate the existing text as paragraph (a);

■ b. Add and reserve paragraph (b); and

■ c. Add paragraph (c) to read as follows:

§ 433.1 Purpose and scope.

* * * * *

(c) This part also establishes green building certification requirements for new Federal buildings that are commercial and multi-family high-rise residential buildings and major renovations to Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after October 14, 2015.

§ 433.3 [Amended]

■ 4. In § 433.3 in paragraphs (b)(1), (b)(2) and (b)(3) remove “433.4, 433.5” and add in their place “433.100, and 433.101.”

§§ 433.4 through 433.7 [Removed and Reserved]

■ 5. Remove and reserve §§ 433.4 through 433.7.

■ 6. Add subpart A to part 433 to read as follows:

Subpart A—Energy Efficiency Performance

Sec.

433.100 Energy efficiency performance standard.

433.101 Performance level determination.

Subpart A—Energy Efficiency Performance**§ 433.100 Energy efficiency performance standard.**

(a) (1) All Federal agencies shall design new Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after January 3, 2007, but before August 10, 2012, to:

(i) Meet ASHRAE 90.1–2004, (incorporated by reference, see § 433.3); and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the ASHRAE Baseline Building 2004.

(2) All Federal agencies shall design new Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after August 10, 2012, to:

(i) Meet ASHRAE 90.1–2007, (incorporated by reference, see § 433.3); and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the ASHRAE Baseline Building 2007.

(3) All Federal agencies shall design new Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after July 9, 2014, to:

(i) Meet ASHRAE 90.1–2010, (incorporated by reference, see § 433.3); and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the ASHRAE Baseline Building 2010.

(b) Energy consumption for the purposes of calculating the 30 percent savings shall include space heating, space cooling, ventilation, service water heating, lighting and all other energy consuming systems normally specified as part of the building design except for receptacle and process loads.

(c) If a 30 percent reduction is not life-cycle cost-effective, the design of the proposed building shall be modified so as to achieve an energy consumption

level at or better than the maximum level of energy efficiency that is life-cycle cost-effective, but at a minimum complies with paragraph (a) of this section.

§ 433.101 Performance level determination.

(a)(1) For Federal buildings for which design for construction began on or after January 3, 2007, but before August 10, 2012, each Federal agency shall determine energy consumption levels for both the ASHRAE Baseline Building 2004 and proposed building by using the Performance Rating Method found in Appendix G of ASHRAE 90.1–2004 (incorporated by reference, see § 433.3), except the formula for calculating the Performance Rating in paragraph G1.2 shall read as follows:

(i) Percentage improvement = $100 \times ((\text{Baseline building consumption—Receptacle and process loads}) - (\text{Proposed building consumption—Receptacle and process loads})) / (\text{Baseline building consumption—Receptacle and process loads})$ (which simplifies as follows):

(ii) Percentage improvement = $100 \times ((\text{Baseline building consumption—Proposed building consumption}) / (\text{Baseline building consumption—Receptacle and process loads}))$.

(2) For Federal buildings for which design for construction began on or after August 10, 2012, each Federal agency shall determine energy consumption levels for both the ASHRAE Baseline Building 2007 and proposed building by using the Performance Rating Method found in Appendix G of ASHRAE 90.1–2007 (incorporated by reference, see § 433.3), except the formula for calculating the Performance Rating in paragraph G1.2 shall read as follows:

(i) Percentage improvement = $100 \times ((\text{Baseline building consumption—Receptacle and process loads}) - (\text{Proposed building consumption—Receptacle and process loads})) / (\text{Baseline building consumption—Receptacle and process loads})$ (which simplifies as follows):

(ii) Percentage improvement = $100 \times ((\text{Baseline building consumption—Proposed building consumption}) / (\text{Baseline building consumption—Receptacle and process loads}))$.

(3) For Federal buildings for which design for construction began on or after July 9, 2014, each Federal agency shall determine energy consumption levels for both the ASHRAE Baseline Building 2007 and proposed building by using the Performance Rating Method found in Appendix G of ASHRAE 90.1–2010 (incorporated by reference, see § 433.3), except the formula for calculating the

Performance Rating in paragraph G1.2 shall read as follows:

(i) Percentage improvement = $100 \times ((\text{Baseline building consumption—Receptacle and process loads}) - (\text{Proposed building consumption—Receptacle and process loads})) / (\text{Baseline building consumption—Receptacle and process loads})$ (which simplifies as follows):

(ii) Percentage improvement = $100 \times ((\text{Baseline building consumption—Proposed building consumption}) / (\text{Baseline building consumption—Receptacle and process loads}))$.

(b) Each Federal agency shall consider laboratory fume hoods and kitchen ventilation systems as part of the ASHRAE-covered HVAC loads subject to the 30 percent savings requirements, rather than as process loads.

■ 7. Add and reserve subpart B to part 433 to read as follows:

Subpart B—Reduction in Fossil Fuel-Generated Energy Consumption [Reserved]

■ 8. Add subpart C to part 433 to read as follows:

Subpart C—Green Building Certification for Federal Buildings**§ 433.300 Green building certification.**

(a) If a Federal agency chooses to use a green building certification system to certify a new Federal building or a Federal building undergoing a major renovation and such building is also either a public building (as defined in 40 U.S.C. 3301) for which transmittal of a prospectus to Congress is required under 40 U.S.C. 3307, or a Federal building for which estimated new building or major renovation design and construction costs are at least \$2,500,000 (in 2007 dollars, adjusted for inflation), and design for construction began on or after October 14, 2015.

(b) The system under which the building is certified must:

(1) Allow assessors and auditors to independently verify the criteria and measurement metrics of the system;

(2) Be developed by a certification organization that:

(i) Provides an opportunity for public comment on the system; and

(ii) Provides an opportunity for development and revision of the system through a consensus-based process;

(3) Be nationally recognized within the building industry;

(4) Be subject to periodic evaluation and assessment of the environmental and energy benefits that result under the rating system; and

(5) Include a verification system for post-occupancy assessment of the rated

buildings to demonstrate continued energy and water savings at least every four years after initial occupancy.

(c) *Certification level.* The building must be certified to a level that promotes the high performance sustainable building guidelines referenced in Executive Order 13423 “Strengthening Federal Environmental, Energy, and Transportation Management” and Executive Order 13514 “Federal Leadership in Environmental, Energy and Economic Performance.”

PART 435—ENERGY EFFICIENCY STANDARDS FOR THE DESIGN AND CONSTRUCTION OF NEW FEDERAL LOW-RISE RESIDENTIAL BUILDINGS

■ 9. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 7101 *et seq.*

■ 10. The heading for part 435 is revised to read as set forth above.

■ 11. In § 435.1:

- a. Redesignate the existing text as paragraph (a);
- b. Add and reserve paragraph (b); and
- c. Add paragraph (c) to read as follows:

§ 435.1 Purpose and scope.

* * * * *

(c) This part also establishes green building certification requirements for new Federal buildings that are low-rise residential buildings and major renovations to Federal buildings that are low-rise residential buildings, for which design for construction began on or after October 14, 2015.

§§ 435.6 and 435.7 [Removed]

■ 12. Remove §§ 435.6 and 435.7.

§ 435.8 [Redesignated as § 435.6]

■ 13. Section 435.8 is redesignated as § 435.6.

Subparts B and C of Part 435 [Redesignated]

- 14. Redesignate subparts B and C of part 435 as subparts D and E of part 435.
- 15. Redesignate §§ 435.300 through 435.306 as §§ 435.500 through 435.506 respectively.
- 16. Add and reserve a new subpart B to read as follows:

Subpart B—Reduction in Fossil Fuel-Generated Energy Consumption [Reserved]

■ 17. Add a new subpart C to read as follows:

Subpart C—Green Building Certification for Federal Buildings

§ 435.300 Green building certification.

(a) If a Federal agency chooses to use a green building certification system to certify a new Federal building or a Federal building undergoing a major renovation and construction costs for such new building or major renovation are at least \$2,500,000 (in 2007 dollars, adjusted for inflation), and design for construction began on or after October 14, 2015:

(b) The system under which the building is certified must:

- (1) Allow assessors and auditors to independently verify the criteria and measurement metrics of the system;
- (2) Be developed by a certification organization that
 - (i) Provides an opportunity for public comment on the system; and
 - (ii) Provides an opportunity for development and revision of the system through a consensus-based process;
- (3) Be nationally recognized within the building industry;
- (4) Be subject to periodic evaluation and assessment of the environmental and energy benefits that result under the rating system; and
- (5) Include a verification system for post occupancy assessment of the rated buildings to demonstrate continued energy and water savings at least every four years after initial occupancy.

(c) *Certification level.* The building must be certified to a level that promotes the high performance sustainable building guidelines referenced in Executive Order 13423 “Strengthening Federal Environmental, Energy, and Transportation Management” and Executive Order 13514 “Federal Leadership in Environmental, Energy and Economic Performance.”

PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

■ 18. The authority citation for part 436 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 8254; 42 U.S.C. 8258; 42 U.S.C. 8259b.

Subpart A—Methodology and Procedures for Life Cycle Cost Analyses

■ 19. Revise § 436.14(d) to read as follows:

§ 436.14 Methodological assumptions.

* * * * *

(d) Each Federal agency shall assume that the appropriate study period is as follows:

(1) For evaluating and ranking alternative retrofits for an existing Federal building, the study period is the expected life of the retrofit, or 40 years from the beginning of beneficial use, whichever is shorter.

(2) For determining the life cycle costs or net savings of mutually exclusive alternatives for a given building energy system or building water system (e.g., alternative designs for a particular system or size of a new or retrofit building energy system or building water system), a uniform study period for all alternatives shall be assumed which is equal to—

(i) The estimated life of the mutually exclusive alternative having the longest life, not to exceed 40 years from the beginning of beneficial use with appropriate replacement and salvage values for each of the other alternatives; or

(ii) The lowest common multiple of the expected lives of the alternative, not to exceed 40 from the beginning of beneficial use with appropriate replacement and salvage values for each alternative.

(3) For evaluating alternative designs for a new Federal building, the study period extends from the base year through the expected life of the building or 40 years from the beginning of beneficial use, whichever is shorter.

* * * * *

[FR Doc. 2014–24150 Filed 10–10–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 140131087–4087–01]

RIN 0694–AG08

Revisions to the Commerce Control List: Imposition of Controls on Integrated Circuits, Helicopter Landing System Radars, Seismic Detection Systems, and Technology for IR Up-Conversion Devices

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to impose foreign policy controls on read-out integrated circuits and related “software” and “technology,” radar for helicopter autonomous landing systems, seismic intrusion detection



TO: Burlington Planning Commission
FROM: Scott Gustin, Department of Permitting & Inspections
CC: Meagan Tuttle, City Planning
DATE: September 4, 2019
RE: Proposed CDO Amendment: Accessory Uses & Structures

Overview & Background

This amendment stems from staff's observation of inconsistent treatment of "accessory" in various sections of the Comprehensive Development Ordinance. The Planning Commission Ordinance Committee reviewed this amendment at their December 2018 and February 2019 meetings and forwarded it for discussion by the full Planning Commission.

The CDO makes multiple references to the term "accessory" in a variety of different scenarios such as accessory uses, accessory structures, and accessory dwelling units. The idea is predicated on the distinction between principal and accessory, whether in reference to structures or uses. Within the context of the CDO, the term "principal" refers to the main structure or use of a property. "Accessory" refers to an adjunct structure or use that is customary and incidental to the principal structure or use. A principal use or structure may stand on its own. An accessory use or structure must always be associated with a primary use or structure.

Some common examples of an accessory/principal relationship include a shed associated with a single family home or administrative office space associated with a grocery store use. The focus here is on "accessory;" however, it bears noting that the term "principal" (or primary) is not defined in Article 13. Providing such definition is recommended.

Accessory is essentially about a feature's scope and context as it relates to the primary feature. The term should be plainly and simply defined to establish clear guidelines while affording necessary flexibility for any particular set of circumstances. Over-defining the term or trying to articulate standards for particular situations lessens flexibility.

Recommended Amendment Details

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement & Summary

The purpose of this amendment is to provide clarity as to what "accessory" is and to establish consistency in the application of "accessory" throughout the CDO. Some adjustment is made to the definition of the term "accessory," and misuse of the term is corrected in two places. Some related clean-up is also included, such as relocating several "accessory" exemptions under the exemptions section of the CDO. Finally, the term "principal" is also defined.

Proposed Amendments

- Amend Sec. 3.1.2 (c) to include exemptions relocated from Sec. 4.4.5 (d) 4 E.

Sec. 3.1.2 (c), Exemptions

The following shall be exempt from the requirements of this Ordinance and shall not be required to obtain a zoning permit:

(1) – (15) As written.

(16) Seasonal skating rinks

[Note: Renumbering to place seasonal skating rinks as # 12, following #11 Children's play structures, may be more intuitive than simply tagging on at the end.]

- Amend Sec. 4.4.5 (d) 4 to reference "accessory" as defined in Article 13, to relocate exemptions in subsection E to Sec. 3.1.2 (c), and to correct "principle" to "principal".

Sec. 4.4.5 (d) 4, Accessory Residential Structures and Uses

4. Accessory Residential Structures and Uses

An accessory structure and/or use as defined in Article 13 and provided under Sec. 5.1.1 and 5.1.2 customarily incidental and subordinate to a principal residential use, including but not limited to private garages, carriage houses, barns, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and detached fireplaces may be permitted as follows:

- A. Accessory Structures shall meet the dimensional requirement set forth in the district in which they are located pursuant to Sec. 4.4.5(b) of this Article and related requirements in Art 5, Part 2;
 - B. Any accessory structure that is seventy-five percent (75%) or greater of the ground floor area of the ~~principle~~ principal structure shall be subject to the site plan and design review provisions of Art. 3, Part 4 and the applicable standards of Art 6;
 - C. Private garages shall be limited to as many stalls as there are bedrooms in the dwelling to which it is accessory, provided that the ground floor area is less than seventy-five percent (75%) of the ground floor area of the ~~principle~~ principal structure;
 - D. The outdoor overnight storage of commercial vehicles not otherwise associated with an approved home occupation or made available for the exclusive use of the residential occupants, or the outdoor storage of more than one unregistered vehicle, shall be prohibited. Any and all vehicles shall be stored in an approved parking space; and,
 - ~~E. Uncovered play structures, seasonal skating rinks, raised planting beds shall not require a zoning permit. [Note: This provision to be located with all other exemptions in Sec. 3.1.2 (c).]~~
- Amend Sec. 5.1.2 (e) to remove the arbitrary 500 sf limit on nonresidential structures and to refer instead to the applicable provisions of Article 4.

Sec. 5.1.2

(d) Accessory Residential Structures:

An accessory structure customarily incidental and subordinate to a principal residential use shall also be governed by the provisions of Sec. 4.4.5(d)4.

(e) Accessory Nonresidential Structures:

An accessory structure customarily incidental and subordinate to a principal nonresidential use may be permitted ~~subject to the provisions of Article 4 provided the gross floor area of any accessory structure does not exceed five hundred (500) square feet or contain living space.~~

- Amend Sec. 11.1.6 to replace incorrect use of the term "accessory" with correct "non-residential."

Sec. 11.1.6 ~~Accessory~~ Non-Residential Facilities

(a) – (b) As written.

- Amend Article 13: Definitions to include "temporal" in the definition of "accessory," to delete incorrect use of "accessory" in the "animal" definitions, and to define the term "principal."

Accessory Appurtenance, Building or Use: A use or ~~detached building structure~~ that:

- (a) Is located on the same lot as the principal use or building served;
- (b) Is clearly incidental to and customarily found in connection with the principal use or building; and
- (c) Is subordinate in area, ~~temporal~~ extent, or purpose to the principal use or building served, and is not to exceed twenty-five percent (25%) of the gross area or sales of the principal use or building served.

Animal

- **Boarding:** An establishment involving any structure, land, or combination thereof used, designed, or arranged for the keeping of five (5) or more domestic pets more than three (3) months of age for profit or exchange, inclusive of equines but exclusive of other livestock used for agricultural purposes in areas approved for agricultural uses. The keeping of four (4) or less such animals more than three (3) months of age for personal enjoyment shall not be considered "boarding" for the purposes of this ordinance.
- **Domestic Pet:** Any canine, feline, or European ferret (*Mustela putorius furo*) and such other domestic animals as the Secretary of the Agency of Agriculture, Food and Markets shall establish by rule and that has been bred or raised to live in or about the habitation of humans, and is dependent on people for food and shelter.
- **Livestock:** Animals used for food production (including eggs, milk, honey, and meat) or fiber.
- **Grooming:** Any establishment where domestic pets are bathed, clipped, or combed for the purpose of enhancing their aesthetic value or health.
- **Hospitals:** An establishment for the care and treatment of the diseases and injuries of animals and where animals may be boarded during their convalescence. (See Veterinarian Office)
- **Kennel:** ~~Accessory~~ building or enclosure for the keeping of domestic pets.
- **Barn or coop:** ~~Accessory~~ building or enclosure for the keeping of livestock.
- **Shelter:** A facility used to house or contain stray, homeless, abandoned, or unwanted domestic pets or livestock for the purpose of providing temporary kenneling and finding permanent adoptive homes and that is owned, operated, or maintained by a public body, an established humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

- **Store, Pet:** A retail sales establishment primarily involved in the sale of domestic pets, such as dogs, cats, fish, birds, and reptiles, excluding exotic animals and livestock.

Principal (also Primary) Structure or Use

~~A structure that accommodates the principal use of the lot or use that is the main purpose for which a site is developed and occupied.~~

Principal Building

~~The main or primary Building located on a Lot within which there is conducted any one or more of the Principal Use(s) found on such Lot.~~

Principal Use

~~A main or primary Use accommodate by a Building or a Lot. The dominant use or uses to which the premises is devoted and the primary purpose for which the premises exists.~~

- Strike from Article 14 the definitions of Accessory Building and Use, and Principal Building and Use to eliminate duplication/inconsistencies among definitions in Articles 13 and 14.

~~**Accessory Building:** A Building that: (1) is located on the same Lot as the Principal Use or Building served; (2) is clearly incidental to and customarily found in connection with the Principal Use or Building; and (3) is subordinate in area, extent, or purpose to the Principal Building served.~~

~~**Accessory Use:** use of a Building, Outbuilding, Structure, or Lot allowed pursuant to Section 14.3 and which is subordinate and incidental to and customarily found in association with a Principal Use located within the same lot. Not synonymous with Accessory Dwelling Unit.~~

~~**Principal Building:** the main Building on a Lot, usually located toward the Frontage, in which there is conducted any one or more of the Principal Use of such Lot.~~

~~**Principal Use:** a main or the Principal Use accommodated by a Building or a Lot. The dominant use or uses to which the premises is devoted and the primary purpose for which the premises exists.~~

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

Proposed Future Land Use & Density

The proposed amendment does not directly pertain to any specific goals and policies of planBTV. Insofar as it clarifies and codifies parameters around distinctions between accessory and primary structures and uses, the amendment facilitates implementation of land use standards generally. Therefore, the proposed amendment has little impact on future land use or density, and are limited to adjusted parameters around the use of "accessory" as defined in the CDO.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on the availability of safe and affordable housing. The standards as to accessory dwelling units are unaffected by this amendment.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

Planning Commission Process				
Draft Amendment prepared by: Staff, with recommendation by PC Ord. Cmte	Presentation to & discussion by Commission Sept 10, 2019	Approve for Public Hearing	Public Hearing	Approve & forward to Council
				Continue discussion
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Committee discussion	Ordinance Cmte recommends to Council [as is / with changes]	Second Read & Public Hearing	Approval & Adoption
				Rejected



August 27 2019,

RE: Article 14.4

Mayor Miro Weinberger

City of Burlington Vt.

Dear Mayor Weinberger,

My name is Rene Paquette and I am Vice President of Otter Creek Awnings located in Williston Vt.

I send this short note to you in regards to a change in the awning Regulation set forth 11-13-17.

I have been working with David White Director of planning & Zoning over the last several years (although I have not reach out to him in recent months) to try and look at these regulations that restricts about 70% of awning installed in the down town area of FD6 and FD5.

Some of these awnings that do not meet code in today's regulations would include, the Skinny Pancake dome awning, One Main St entrance awnings, April Cornell window awnings, Jess Boutique, Michael Kehoe, Leunigs, Dear Lucy, Ken's Pizza, Jeff Davis building, Ben & Jerry's, Pretty much all upper Church Street and lower Church St and the list goes on and on.

Otter Creek is not opposed to wanting Retractable awnings as they are our bread and butter, but these regulation restrict business from adding shade to area's that do not have the width for the mandatory 6' projection. (retractable awnings are subject to be a minimum of 8' wide to project out 6').

I would like very much to walk up Church Street with you and point out why I would like for the City to re think the regulation put in place 11/13/2017.

Thank you for taking the time to read this and I hope a meeting can be planned.

Rene Paquette

Vice President

Burlington Planning Commission

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Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur



Burlington Planning Commission Tuesday, August 27, 2019, 6:30 P.M. Conference Room 12, City Hall, 149 Church Street Draft Minutes

Members Present	A Friend, E Lee, B Baker, H Roen, J Wallace-Brodeur, Y Bradley,
Members Absent	A Montroll
Staff Present	D White, M Tuttle, S Gustin, J Redell, S Durmick

I. Agenda

Call to Order	Time: 6:33
Agenda	No changes to the agenda

II. Public Forum

Name	Comment	Commission Action
	No Comments	

III. Report of the Chair

B Baker	• No Report
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IV. Report of the Director

D White	- Planning Office working on branding, website, and social media presence - Coordinating on the 2nd Housing Summit, E911 requirements (coordinator appointment will be B Ward) and readdressing, working with CEDO on Economic Development Strategy - Tracking a number of zoning amendments 19-04 (trees & junkyards) approved by Council Monday, and Council Ordinance Committee will hear recommendations on Inclusionary Zoning for Institutional Housing off-campus this week
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V. Public Hearing: ZA-20-01 Form District 5 Boundaries

Action: Approved the municipal bylaw amendment report and forward to Council, with note that PC may revisit some properties in future amendments		
Motion by: E Lee	Second by: Y Bradley	Vote: Approved unanimously
Type: Public Hearing, Action	Presented by: M Tuttle	
Discussion/Notes: M Tuttle explained that this is a reboot of an earlier recommended amendment which looked at the boundaries of Form District 5 around the downtown core. She further explained that this is coming back to the Planning Commission following Council Ordinance Committee changes. Because the amendment has reached its statutory expiration date, the Council request the Commission to hold a hearing and forward as modified by the Committee. She noted the		

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Tuesday, August 27, 2019

changes included removing properties along S. Champlain and King Streets from the Commission's original recommendation.

- Commissioners discussed the importance that this amendment turn properties which are currently non-conforming, particularly Advanced Music, into conforming properties by including them in the district.
- Commissioners discussed the differences between Residential Housing High Density Overlay and Form District 5 zoning – from a scale perspective they are fairly similar but RH does not have the same mixed-use capabilities that FD5 does.
- S Bushor requested a detailed list of parcels changing to FD5, and info comparing zoning district provisions for the City Council
- The Commission approved the amendment as modified by Council, but noted that they reserve the opportunity to revisit some parcels on lower Church Street (Burlington Telecom Bldg, Hood Plant) and potentially elsewhere around the FD5 boundaries in future amendments.

VI. Mayor's Housing Summit Update

Action: No Action Required. Commissioners are invited to participate on September 4 Housing Summit.

Motion by: NA

Second by: NA

Vote: NA

Type: Presentation, Discussion

Presented by: J Redell, M Tuttle

Discussion/Notes:

- J Redell noted that M Tuttle will present an overview of the Housing Summit policy proposals, and the proposed framework for reforms that will be presented to the community at the 2nd Housing Summit September 4th from 6 – 8 pm in Contois Auditorium.
- M Tuttle noted purpose of presentation is to provide PC a recap of the first Housing Summit, and to provide an overview of zoning-related policies that the Commission will work on this fall. M Tuttle shared background on the importance of each issue relative to Burlington's housing needs, and the draft policy reform framework that the administration will present in September. [See presentation posted online.]
- Energy Efficiency in Rental Housing: Proposal is to phase out Time of Sale Ordinance and incorporate weatherization improvement for rental homes where tenant pays utility bills into the minimum housing code.
- Accessory Dwelling Units (ADUs): Proposal is to simplifying the permitting process, allow ADU's for all single-family homes, no parking space required, allow a max ADU size of 800 sq.ft. regardless of home size, and adjust lot coverage limits.
 - Commissioners discuss the size limits and agree they should be flexible to give homeowners the room to design based upon their needs.
 - Commissioners noted the importance of an ADU Guide to break process, and including Code & Enforcement in this process to craft something workable & certain
 - Commissioners asked if the City should set a numerical goal for ADU creation
 - S Bushor noted the obstacle of owners not having the financial means to build an ADU; would like the City to help identify funding resources for interested homeowners.
- Short Term Rentals: Proposal sets standards for renting out a room vs an entire unit. Regulations are stricter for entire units perpetually being used as short-term rentals by establishing these as a new conditional use with some level of review of their impact, requiring the host to live on property, limiting the number of short term rentals on a property, and applying the housing replacement ordinance if they replace a long-term housing unit.
 - Commissioners discussed short term rentals meeting an economic need in the city (i.e. homeowners offsetting the cost of property taxes, flexible use of student housing that might sit empty in summer, and beds to support tourism). It was noted that the policy tries to balance the benefits of short term rentals and impacts to long-term housing.

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- Commissioners question why the City is not presently enforcing short-term rental compliance. It was discussed that there is not a clear policy to enforce; when rules are adopted, will transition into them before undertaking a massive enforcement effort.
- Minimum Parking Requirements: Proposal is to not require minimum parking standards in Downtown, Neighborhood Activity Centers & major thoroughfares, as well as for permanent affordable housing & the rehabilitation of historic properties; maintain the current maximum parking standards, explore retooling the traffic impact fee to be used for a wider variety of transportation investments (other than just intersection improvements). Not about doing away with parking, but no longer forcing developers to build a prescribed amount.
 - Commissioners would like to hear from and have more robust conversations with the organizations that provide the alternative forms of transportation and what strategies would help them.
 - Commissioners would like to see shared parking (i.e. day parking vs. night parking) and reduced parking requirements in other City zones are not included in the proposal. Other low to no cost measures could be found to make parking more efficient while increasing space for density in the City. Staff offered an example of revising the dimensional standards for parking spaces.
- Housing Trust Fund (HTF): Proposal is to re-establish the level of funding to a full penny of dedicated tax per \$100 of assessed value (via a Charter Change). This would be supplemented by other opportunities on the horizon to increase revenues into the fund from IZ changes and housing replacement for short-term rentals.
 - S Bushor believes that the proposal should be for 1.5 or 2 pennies to ensure it does not depend on Council action, and to raise public awareness of the HTF

VII. Committee Reports

Executive	No Report
Ordinance	No Report
Long Range	No Report

VIII. Commissioner Items

Next Meeting	Next meeting is on Tuesday, September 10, 2019 at 6:30 pm in Conference Room 12
Y Bradley	• Shared opinion that improvements to St. Paul Street is dangerous and impedes traffic. Feels too many changes in the City that discourage vehicles and make driving difficult. • J Redell noted that final details of project aren't complete, which should address some of the issues currently being experienced on the street. • S Bushor echoed concerns about turning radiuses and noted she is meeting with DPW to discuss the street design at the new Cambria Hotel.
H Roen	• Applauded the improvements to GMT schedules and routes
M Tuttle	• Save the date for Oct 9 and 15 for two potential special meetings regarding the Housing Summit reforms.

IX. Minutes and Communications

Action: Approved minutes and accepted the communications		
Motion by: H Roen	Second by: Y Bradley	Vote: Approved unanimously
Minutes Filed: August 13, 2019		

X. Adjourn

Adjournment	Time: 8:15	
Motion: J Wallace-Brodeur	Second: E Lee	Vote: Approved unanimously

DRAFT

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Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

Burlington Planning Commission Tuesday, September 10, 2019, 6:30 P.M. Conference Room 12, City Hall, 149 Church Street Minutes

Members Present	A Friend, E Lee, B Baker, J Wallace-Brodeur, A Montroll
Members Absent	H Roen, Y Bradley
Staff Present	D White, M Tuttle, S Gustin

I. Agenda

Call to Order	Time: 6:33pm
Agenda	No changes to the agenda

II. Public Forum

Name	Comment	Commission Action
S Bushor	Regarding ZA-20-02, will this wait until the Accessory Dwelling Unit proposal from the Housing Summit advances?	

III. Report of the Chair

A Montroll	No Report
------------	---

IV. Report of the Director

D White	- Housing Summit Pt 2 provided specific recommendations related to the policies overviewed in June - Council approved change to GIS position from Planning Dept to Department of Innovation and Technology, assigned E-911 coordinator to the Director of Permitting & Inspections, sent Council Ordinance committee an amendment related to street naming and numbering - Will bring a Municipal Planning Grant Application for an economic development strategy for approval at next meeting
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V. Proposed CDO Amendment: Lot Coverage & Parking for Convalescent Homes

Action: Refer to staff to prepare a proposal related to how to address parking for convalescent use		
Motion by:	Second by:	Vote: N/A
Type: Discussion, Action	Presented by: Jim Langan, Alicia Dimario & S Gustin	
Discussion/Notes: S Gustin noted that the request from Birchwood Terrace is to increase lot coverage allowance for senior housing/convalescent/nursing homes to make it equivalent to the lot coverage bonus afforded to inclusionary zoning requirements, as well as to increase the minimum parking requirements for this use. Staff recommendation is to approve the change to lot coverage, but		

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Tuesday, September 10, 2019

maintain the parking requirements. Staff believes that if the Commission approves the lot coverage change Birchwood would have a path through the DRB to pursue their parking needs.

- J Langan & A Dimario note that the function and model of nursing facilities has changed, and needs of patients have increased. This has increased level of required staffing and other personnel to meet the level of care required. This request does not come from a major change to the number of parking spaces/employees needed by the facility, but to changes by DPW that restricted parking on Starr Farm Road, and to the inability to share/lease spaces in nearby parking lots. Noted that staff's recommendation would help Birchwood get close to their needs, but there are continuing concerns that the parking requirement for convalescent homes is not consistent with other uses in the ordinance that have similar staffing levels.

Commissioner Comments:

- Commission hesitant to increase the minimum parking requirements for this use, concerned about potential for unintended consequences to other facilities by raising the standard, and offered suggestions for alternative ways to address the facility's parking needs.
- Commissioners noted that these facilities will continue to be important as our population ages. There was some concern about relying on a DRB waiver process to address these facilities parking needs, and a desire to ensure policy doesn't create a deterrent to their locating within the city.
- Commission asked staff to bring forth recommendations to either increase or provide an alternative to the waiver process for parking requirements. It was noted that this may related to shared parking requirements in the ordinance.

VI. Proposed ZA-19-09: Zoning Administrative Officer

Action: Approve municipal bylaw amendment report and forward amendment to Council without recommendation, and forward revised Commission comments memo

Motion by: A Friend

Second by: J Wallace Brodeur

Vote: Approved Unanimously

Type: Discussion, Action

Presented by: M Tuttle

Discussion/Notes:

- M Tuttle discussed a draft memo prepared at the Commission's request to reflect the Commission's opinions regarding the separation of planning and zoning functions as part of the creation of the Department of Permitting and Inspections.
- Commission directed staff to incorporate an additional statement about the loss of benefit of separation between Mayor's office and the planning director in terms of politics, and the risk of a Mayoral appointment that doesn't have appropriate planning qualifications.
- Commissioners expressed importance of this memo to represent what the Commission would have said if given adequate opportunity to weigh in before it was put to the city-wide vote.

VII. Approval of Green Globes Standard

No action

Motion by:

Second by:

Vote: Approved Unanimously

Type: Discussion, Action

Presented by: D White

Discussion/Notes:

- E Morrow, Burlington 2030 District: Feels it is obvious that Green Globes would be the 4th standard to incorporate in the ordinance. Notes that the three existing standards are completely different, but focused on energy performance to weigh programs against one another. Topic-by-topic almost all of the same components as LEED, but only 10% of Green Globes points come from energy, vs 20% under LEED, and these points are optional. Don't see what the problem is with the standards currently have in the ordinance.

Tuesday, September 10, 2019

- D White noted that research has turned up different opinions about Green Globes and the energy performance issue, but most actually indicate that Green Globes has more of a focus on energy, and stress the importance of having options that bring more projects into a green building standard process.

Commissioner Comments:

- Some Commissioners were concerned about public comments suggesting that there is currently no oversight of energy performance even when an architect signs off compliance with RBES/CBES, or for after-the fact retrofits.
- Acknowledgement that Green Globes program has some merit, and that it could be a standard to bring more people into the green building process. However, due to concerns that energy performance not required, this could disincentivize participation in LEED.
- Questions were raised about whether the threshold for building size or zoning districts in which this standard applies should be revisited.
- Ultimately, due to lack of strong showing of support for this program, and lingering questions about the energy efficiency standards, the Commission chose not to take action on the request to approve the Green Globes standard.

VIII. Proposed ZA-20-02 Accessory Definitions

Action: Approve municipal bylaw amendment report and warn for public hearing

Motion by: A Friend

Second by: B Baker

Vote: Approved Unanimously

Type: Discussion, Action

Presented by: S Gustin

Discussion/Notes:

- S Gustin noted that this amendment is a clean-up of the use of the word "accessory" throughout the ordinance, correction of spelling errors, and to ensure consistency across Article 13 and Article 14 in terms of how principal and accessory uses and structures are defined. Accessory Dwelling Units are a Special Use and are not addressed by this amendment.

IX. Committee Reports

Executive	No Report
Ordinance	No Report
Long Range	No Report

X. Commissioner Items

Next Meeting	Next meeting is on Tuesday, September 24, 2019 at 6:30 pm in Conference Room 12
B Baker	• Supreme Court decision regarding the interpretation of the 15-year statute of limitations. Stressed that lawyers need predictability; this changes the permitting standards retroactively. Have this on an agenda for discussion in the future.

XI. Minutes and Communications

Action: Approved minutes and accepted the communications

Motion by: A Friend

Second by: B Baker

Vote: Approved unanimously

Minutes Filed: August 27, 2019

Communications Filed: Letter from Otter Creek Awnings Re: Sign Standards

XII. Adjourn

Adjournment		Time: 8:07	
Motion: E Lee	Second: A Friend		Vote: Approved unanimously



Andy Montroll, Chair

Signed: September 24, 2019

Respectfully submitted by: S Durmick



Sidney Durmick, Planning Commission Secretary