



2025 Construction Law Seminar

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Building Green

Navigating Environmental Compliance & Litigation in Construction

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Where Green Building Was and Where It Is Going

Smart Growth Guidelines

Fifteen years ago, government sought to provide a comprehensive framework for planning, designing, and constructing sustainable, resilient, and economically viable housing developments.ⁱ Developed with input from housing authorities, environmental agencies, and urban planners, the guidelines emphasized the integration of **green building practices**, **resilient infrastructure**, and **community-centered design**. They aimed to support local governments, developers, and housing providers in creating developments that were determined to be not only environmentally responsible but also socially equitable and economically sound.

For attorneys and construction leaders, the guidelines highlight critical regulatory considerations, including **zoning alignment**, **environmental impact assessments**, and **compliance with federal and state housing mandates**. They also outlined best practices for **site selection**, **stormwater management**, **energy efficiency**, and **material sustainability**, and at the time offered a roadmap for reducing long-term operational costs and enhancing community livability. Importantly, the guidelines encouraged early collaboration among legal, design, and construction teams to ensure projects met both legal requirements and smart growth objectives from inception through completion.

An Updated Land Use and Green Infrastructure Scorecard (2023)

The 2023 Land Use and Green Infrastructure Scorecardⁱⁱ represents a significant evolution of the smart growth concepts first articulated in earlier frameworks like the 2009 Smart Growth Guidelines. While the original guidelines emphasized compact, mixed-use development and efficient land use to curb sprawl and promote livability, the 2023 Scorecard deepens and broadens these principles by embedding them within a comprehensive environmental and climate resilience strategy. It integrates green infrastructure as a central organizing principle—emphasizing the use of natural systems to manage stormwater, reduce urban heat, and enhance ecological health—while also aligning land use planning with climate adaptation, hazard mitigation, and public health goals.

Moreover, the 2023 Scorecard introduces a more structured, actionable, and measurable approach to smart growth. It provides municipalities with a point-based self-assessment tool that spans planning, regulation, incentives, and community engagement. This framework not only helps local governments identify and remove barriers to sustainable development but also encourages equity-centered planning by incorporating environmental justice, anti-displacement strategies, and inclusive public participation. In doing so, the Scorecard transforms smart growth from a set of planning ideals into a practical, performance-oriented system for building resilient, inclusive, and environmentally sound communities.

A Changing World and Changing Approach

The evolution of disaster-resilient green building planning has shifted from hazard-specific mitigation toward a more integrated, landscape-based, and equity-focused approach. The 2023 EPA publication on Disaster-Resilient Design Conceptsⁱⁱⁱ reflects this transformation by emphasizing multi-benefit strategies that not only reduce risk from natural hazards but also enhance community livability, environmental health, and climate resilience. Rather than treating disasters as isolated events, the guide recognizes the interconnected nature of hazards—such as how drought can lead to wildfires, which in turn increases the risk of landslides and flooding—and promotes design solutions that address these cascading risks holistically.

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This modern approach to resilient design incorporates green infrastructure, nature-based solutions, and community-centered planning. It encourages the use of parks, green roofs, permeable pavements, and restored wetlands not only to manage stormwater and reduce heat but also to serve as safe gathering spaces during emergencies. Importantly, the guide underscores the need for inclusive engagement and prioritization of historically disadvantaged communities, ensuring that resilience investments address social vulnerability alongside physical risk. This marks a significant evolution from earlier models, aligning disaster resilience with broader goals of sustainability, equity, and climate adaptation.

Transitioning from Building Green to Building Sustainably

The 2024 SmartMarket Brief^{iv} reveals a notable shift in the homebuilding industry from simply “building green” to a broader, more integrated approach of “building sustainably.” Originally, green building focused primarily on improving energy and water efficiency, reducing resource consumption, and minimizing environmental impact. While these remain core components, the concept of sustainability has expanded to include resilience to climate-related hazards, healthier indoor environments, and long-term operational performance. This evolution reflects a growing recognition that sustainable homes must not only reduce their environmental footprint but also withstand and adapt to increasingly severe weather events and changing climate conditions.

This broader definition of sustainability now encompasses practices like designing for flood and wind resistance, incorporating renewable energy systems, enabling home electrification, and preparing homes for electric vehicle infrastructure. It also includes social dimensions, such as ensuring homes are healthier and more comfortable for occupants, and economic considerations, like reducing utility costs and increasing long-term value. The shift from green to sustainable building represents a more holistic approach—one that balances environmental responsibility with resilience, occupant well-being, and market viability. This evolution is driven by both regulatory changes and a growing awareness among builders and consumers of the need for homes that are not only efficient but also durable, adaptable, and future-ready.

Put another way, in 2025, sustainable building has evolved beyond the traditional concept of “green building” to encompass a more holistic approach that integrates environmental responsibility with long-term human and economic well-being. Sustainable construction now emphasizes not only the use of renewable and recyclable materials but also the creation of buildings that are energy-efficient, durable, and supportive of occupant health and productivity.^v This broader perspective includes reducing toxic waste, minimizing energy consumption, and designing structures that require less maintenance over time.

The key distinction between green and sustainable building lies in scope: while green building focuses primarily on environmental impact—such as reducing carbon footprints or using solar energy—sustainable building incorporates the “triple bottom line” of people, planet, and profit. It aims to create structures that are not only environmentally friendly but also economically viable and socially beneficial. This shift reflects a growing recognition that true sustainability must balance ecological goals with human comfort and financial practicality, ensuring that buildings contribute positively to communities and the environment over their entire lifecycle.

Where Does Building Sustainably Go From Here?

The future of sustainable building in 2025 is shaped by both accelerating market momentum and shifting political landscapes. According to one company’s 2025 green building statistics, the sector is experiencing rapid growth, with the global green buildings market projected to reach over \$1.3 trillion by 2034.^{vi} This expansion is driven by increasing demand for energy-efficient systems, green materials, and long-term cost savings—such as a 10.5% average reduction in operating costs in the first year of green building use. Builders are also responding to

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consumer preferences for healthier, more resilient homes, with features like green HVAC systems, sustainable lighting, and water-efficient fixtures becoming standard in many projects.

However, the policy environment under the new U.S. administration may introduce headwinds. The Trump-led administration in 2025 signals a shift toward deregulation and market-driven solutions.^{vii} This includes rolling back environmental mandates, streamlining permitting processes, and reducing oversight tied to energy efficiency and emissions standards. While this could accelerate construction timelines and reduce upfront costs, it may also slow progress on climate goals and reduce incentives for sustainable innovation. The future of sustainable building, therefore, hinges on a balance between private-sector momentum and public policy support, with the potential for regional disparities in adoption depending on local regulations and consumer demand.

What Will Legal Disputes Look Like in this Field in the Coming Years?

As climate change intensifies, legal claims arising from construction projects are beginning to evolve in scope and complexity, particularly around liability for climate-related harm. A recent New York Times article highlights a groundbreaking wrongful death lawsuit filed against major oil companies, alleging that their role in driving climate change contributed to a deadly heat dome event.^{viii} This case signals a shift in legal accountability—from traditional negligence or defect claims in construction to broader claims implicating upstream contributors to environmental hazards.

As governments at all levels introduce stricter laws to reduce carbon emissions, manage construction waste, and protect natural ecosystems, construction firms are increasingly exposed to legal risks for non-compliance.^{ix} These include failing to meet green building benchmarks such as LEED certification or net-zero energy targets, improper documentation of waste disposal, and violations of stormwater runoff and wetland protection rules. Legal claims may arise not only from regulatory enforcement but also from project delays, loss of incentives, or reputational damage tied to sustainability failures. For attorneys and construction leaders, this signals a need to embed environmental compliance into every phase of project planning and execution—from design through demolition—to mitigate liability and maintain competitive standing in a greening market.

For the construction industry, this dispute evolution means that builders, developers, and even designers may face increased scrutiny over how their projects account for climate resilience. As extreme weather events become more frequent and severe, failure to incorporate adaptive design—such as heat mitigation, flood protection, or wildfire resistance—could expose firms to litigation, especially if harm to occupants or surrounding communities can be linked to foreseeable climate risks. Moreover, as legal precedents expand to include climate attribution science, construction-related claims may increasingly involve third-party actors like fossil fuel companies, utilities, or municipalities, creating a more complex web of liability. This underscores the growing importance of sustainable, resilient design not just as a best practice, but as a legal safeguard.

Concluding Comments

In conclusion, the construction industry stands at a pivotal moment where sustainability, resilience, and legal accountability are converging to redefine best practices and risk management. As environmental regulations tighten and climate-related risks escalate, the legal landscape is evolving to hold a broader range of stakeholders accountable—from builders and designers to upstream contributors like energy producers. For attorneys and construction professionals, this means proactively integrating sustainable design principles, regulatory compliance, and climate adaptation strategies into every phase of a project is no longer optional—it is essential. Those who lead in embracing this shift will not only mitigate legal exposure but also position themselves at the forefront of a more responsible, resilient, and future-ready built environment.

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ⁱ [https://www.epa.gov/smartgrowth/smart-growth-guidelines-sustainable-design-and-development#:~:text=Smart%20Growth%20Guidelines%20for%20Sustainable%20Design%20and%20Development%20\(pdf\)%20,and%20invests%20public%20resources%20more](https://www.epa.gov/smartgrowth/smart-growth-guidelines-sustainable-design-and-development#:~:text=Smart%20Growth%20Guidelines%20for%20Sustainable%20Design%20and%20Development%20(pdf)%20,and%20invests%20public%20resources%20more)

ⁱⁱ <https://www.epa.gov/green-infrastructure/land-use-and-green-infrastructure-scorecard>

ⁱⁱⁱ <https://www.epa.gov/smartgrowth/disaster-resilient-design-concepts>

^{iv} <https://www.nahb.org/blog/2024/11/how-green-building-is-shaping-the-future-of-construction>

^v <https://gatewaybuildco.com/sustainable-building-practices-2025/>

^{vi} <https://resimpli.com/blog/green-building-statistics/>

^{vii} <https://greenerideal.com/news/building/what-can-we-expect-from-the-new-administrations-policies-on-green-building-in-2025/>

^{viii} https://www.nytimes.com/2025/05/29/climate/oil-companies-wrongful-death-lawsuit-heat-dome.html?auth=login-google1tap&login=google1tap&referringSource=articleShare&smid=nytcore-ios-share&unlocked_article_code=1.K08.gEM0.9PxXU3XGQjEG

^{ix} <https://www.suretybondprofessionals.com/legal-issues-construction-2025/>