



BUILDING VALUE
SUSTAINABLY

U.S. COMMERCIAL REAL ESTATE AND TELECOM REGULATION BULLETIN

Q3 2024

Essential insights and commentary on the implications for investors, lenders, owners, leaseholders, developers, contractors and property and compliance managers, nationwide.

KNOW WHAT YOU NEED TO KNOW

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Disclaimer

The information contained in this Bulletin is intended for general informational purposes only, providing a broad overview. The Bulletin should not be construed as legal or professional advice on specific facts. While we strive to provide accurate and up-to-date information, the content in this Bulletin is not a definitive statement on the subjects addressed. The content is based upon our understanding of environmental regulations and requirements at the time of publication. However, regulations and requirements may change, and specific circumstances may vary. We make no representations or warranties, express or implied, regarding the completeness, accuracy or suitability of the information contained herein. Consult with a qualified environmental professional for advice specific to your organization's unique situation.

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EXECUTIVE OVERVIEW

As we navigate through Q3 2024, regulatory changes continue to shape the commercial real estate landscape across the U.S. This quarter's bulletin highlights significant updates impacting investors, property managers, developers, and environmental professionals alike. From California's tightening of balcony inspection requirements to federal amendments addressing ESG enforcement, our experts break down what you need to know to stay compliant and protect your assets.

This edition includes crucial developments in state-specific regulations, such as California's SB 219 addressing residential radon testing and New York's air regulation adjustments, as well as updates to nationwide policies like the EPA's amended "All Appropriate Inquiries" rule. Notable shifts in energy and environmental standards in cities like New York and Seattle, and Maryland's new benchmarking requirements, further underscore the increasing complexity of compliance.

The SEC's disbanding of its ESG enforcement group brings relief to some, but companies must remain vigilant about aligning with evolving expectations in environmental, social, and governance reporting. Additionally, updates on Lead and Copper Rule Revisions (LCRR) compliance and National Environmental Policy Act (NEPA) Section 106 highlight the growing need for a proactive approach to regulatory changes in the telecom and infrastructure sectors.

Our comprehensive analysis equips you with the insights needed to navigate these regulations effectively. As always, EBI Consulting is here to provide expert guidance, ensuring you stay ahead of the curve in this dynamic regulatory environment.



BY NOLAN PREVITE | President & CEO, EBI

ABOUT EBI

For 35 years we've been helping investors, lenders, owners, developers, contractors and property managers mitigate risk and optimize their built facilities for maximum economic, safety and environmental value. With a network of over 1000 technical experts, we are unique in our ability to deliver high quality, responsive services across the entire real estate asset lifecycle, from rapid assessments, to advisory, to implementation and verification services, nationwide.

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CALIFORNIA SB-721 “BALCONY ORDINANCE” INSPECTION DEADLINE EXTENDED TO JAN. 1, 2026!



BY DIRK A. GRIFFIN | National Program Director - PCA Services, EBI

On September 28, 2024, California extended the SB-721 compliance deadline by a year to January 1, 2026, via AB-2579. SB-721 was introduced following the 2015 Berkeley balcony collapse and mandates inspections for wood-constructed, elevated structures (E3) on multi-unit residential buildings. Compliance requires inspection of balconies, decks, and other elevated surfaces over six feet above ground, repeating every six years.

SCOPE AND OVERVIEW OF THE NEW REGULATION

- The purpose of the ordinance is to determine whether wood reliant E3s and associated waterproofing elements are in good, safe condition, adequate working order, and free from fungus, deterioration, decay, or improper alteration to ensure safety.
- To support the ordinance objective of enhancing public safety, state law requires the inspector be a registered architect, civil engineer, general contractor (Class ‘A’, ‘B’ or ‘C-5’), or an ICBO-certified plans examiner or building inspector.
- Each inspection results in a report required by law to include photographs and narrative to establish a baseline of the current condition of the inspected components for comparison to subsequent inspections. The report states expectations of future performance, projected service life, and recommendations for further inspection or repairs.
- The ordinance requires 15% of the wood reliant E3s be inspected both above and below the walking surface. If the wooden elements and steel fasteners are covered by finishes, then selective removal of finishes will be needed to provide access points to see the bare wood and fasteners, and these points will require subsequent patching.
- If the inspection indicates that corrective work is needed, the emergent nature of the work is determined, and applicable permits can be applied for and issued to complete corrective work and in all cases the work should be completed no later than 180 days following the inspection. Details on timelines, penalties, etc. are available from your EBI contacts.
- Subsequent inspections must be completed every six (6) years. Once the report is delivered, owners must keep the report available for two inspection cycles (12 years). The report must be disclosed and delivered to the buyer at the time of any subsequent sale, who must themselves keep it on hand for the remainder of the two cycles.

KEY TAKEAWAYS AND IMPACT

- Due to the nature of these inspections, time is not an ally in their completion. The inspections can take time and implementation of the findings and corrective action will as well. If you have not already completed yours, start today as the end of the 180 window to correct, should you have a problem, will be passed before you know it.
- Implement a maintenance program to insure, between inspections, that fasteners and wood remain in good condition, that water barriers, such as flashing and sealants, are keeping wood as free of moisture as is possible to prevent deterioration.
- Address observed conditions such as standing water, sagging, staining, blistering or peeling of paint, splitting or checking of wood, or loosening or weakening connections at railings, stair stringers, and posts are addressed immediately.
- Engage engineering or architectural expertise to help guide you toward long-term solutions and property preservation.
- Capital expenditures early in the process will pay dividends in the long run by protecting the lives of your tenants and their guests, and protecting your investment, rather than waiting until later when the repair costs can multiply significantly.

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BY ANDREW TAYLOR | Senior Project Manager, EBI

In general, Public Water Systems (PWS) are thought of as those owned and operated by large municipal entities supplying water to thousands of residents of cities and or suburbs. Also included in PWS are the smaller Community Water Systems (CWS) and Non-Transient Non-Community Water Systems (NTNCWS) which are also required to follow EPA guidance on lead and copper reporting, and provide potable water to individuals as a:

Community Water System

- serves at least 15 service connections used by year-long residents or regularly serves at least 25 year-long residents,
- includes subdivisions, mutual water companies, mobile home parks, and other similar residential areas

Non-Transient Non-Community Water System

- water system that regularly supplies water to at least 25 of the same people at least six months per year or has 15 service connections
- schools, office buildings, hospitals, factories, campgrounds, and other businesses that have their own dedicated water supply

SCOPE AND OVERVIEW OF THE NEW REGULATION

These systems are required by EPA to follow guidance as outlined in the Lead and Copper Rule(s) initially promulgated in 1991 and as amended and revised since, the most recent revision being that of October 16, 2021. The rule requires distribution system information as well water quality to be provided by October 16, 2024, and includes:

- All CWSs and NTNCWSs must complete and submit an initial service line inventory to their state.
- The inventory must include all service lines connected to the public water distribution system regardless of ownership status.
- Each service line must be characterized as lead, galvanized requiring replacement, lead status unknown (or unknown), or non-lead using approved sources.
- The service line inventory must also be publicly accessible, and the publicly accessible inventory must include locations for lead and galvanized requiring replacement service lines.
- That all community water systems (CWSs) and NTNCWSs must collect lead and copper tap samples, for details see [Lead and Copper Sample Results Rule](#).

KEY TAKEAWAYS AND IMPACT

- Report to the appropriate state regulatory agency the results and findings of the lead line survey by October 16, 2024.
- Beginning October 16, 2024, an exceedance of the action level for lead requires Tier 1 public notification. This applies to any community water system or non-transient non-community water system that exceed critical lead and copper thresholds.
- The LCR includes a new provision that allows States to grant monitoring waivers if systems have very low lead and/or copper 90th percentile levels and meet certain plumbing material restrictions. For details see Waivers Full & Partial.
- Various states may have different requirements for reporting, check with your particular agency for details.

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NEPA AND SECTION 106 COMPLIANCE FOR BEAD AND OTHER FEDERALLY SUBSIDIZED BROADBAND PROGRAMS



BY WILL GILBERT | Senior Account Executive, EBI

Is your company building fiber networks with the assistance of federal or state funding? Most state and federal broadband grants are accompanied by requirements for assessing the environmental and cultural resource impacts associated with a project. EBI's team has expertise in ensuring compliance for several federally funded broadband programs including:

- U.S. Treasury Capital Projects Fund (CPF)
- U.S. Treasury State and Local Fiscal Recovery Funds (SLFRF)
- NTIA BEAD
- NTIA Middle Mile
- NTIA Tribal Broadband Connectivity Program

Each program listed above requires that funded projects undergo certain levels of environmental and cultural review prior to construction.

SCOPE AND OVERVIEW OF THE NEW GUIDANCE

- There are different requirements for each of the programs listed above, and EBI's White Paper, ["NEPA and Section 106 Compliance for BEAD and other Federally Subsidized Broadband Programs"](#), goes into more detail regarding specifics. In summary:

For the U.S. Department of Commerce NTIA BEAD funded projects, there are:

- State Broadband Agency Procedural Requirements for NEPA
- Subgrantee NEPA Compliance Requirements for Completing Environmental and Cultural Resource Reviews

For U.S. Treasury ARPA CPF and SLFRF funded projects, there are:

- Subgrantee Requirements for Completing Treasury's Coronavirus Capital Projects Fund Environmental Checklist Review

KEY TAKEAWAYS AND IMPACT

Complying with the regulations for building fiber networks, with the assistance of federal or state funding, is important for many reasons:

- Generally, state broadband agencies will not approve the release of funds to awardees without submittal and approval of the required environmental and cultural resource evaluations.
- For BEAD projects, in addition to state approval, the NTIA must also approve NEPA evaluations submitted for projects before funds are released.
- Not properly performing required environmental and cultural resource evaluations can result in forfeiture of grants/funds, cause ineligibility for future grants/funds, and/or subject the subgrantee to fines and enforcement actions.

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BY KYLE SULLIVAN | ESG Analyst, EBI

On September 27, 2024, California Governor Gavin Newsom signed Senate Bill (SB) 219 into law. SB 219 amends certain aspects of the state's Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261). SB 219 does not remove reporting requirements, but it does offer additional flexibility for reporting entities and gives the California Air Resources Board (CARB) more time to develop the regulatory program.

SCOPE AND OVERVIEW OF THE NEW REGULATION

While SB 219 leaves the reporting deadlines under SBs 253 and 261 unchanged, it introduces several technical adjustments:

- CARB now has until July 1, 2025, instead of January 1, 2025, to finalize regulations for SB 253.
- Scope 3 emissions disclosures will still be required in 2027, but CARB will have the flexibility to set the specific deadline, rather than the original 180-day timeframe after Scopes 1 and 2 disclosures.
- Parent companies can consolidate emissions reporting under SB 253, exempting subsidiaries from filing separate reports.
- CARB is no longer obligated to contract an external organization for climate risk disclosure reports under SB 261, although CARB retains the ability to do so.
- Companies will no longer need to pay annual fees when submitting reports under SBs 253 and 261.

KEY TAKEAWAYS AND IMPACT

Beginning in 2026, SB 253 requires any public or private company operating in California with annual revenues of \$1 billion or more to disclose its Scope 1 and Scope 2 greenhouse gas emissions. This means that companies will be required to track and report their emissions starting from 2025. Scope 3 annual disclosures under SB 253 will begin in 2027 on a schedule to be determined by CARB.

SB 261 requires any public or private company operating in California with annual revenues of \$500 million or more to disclose its climate-related risks and the strategies implemented to mitigate them by January 1, 2026.

SB 219's decision to uphold the reporting deadlines of SB 253 and SB 261 will intensify attention on the federal lawsuit challenging the constitutionality of both laws—Chamber of Commerce of the United States of America, et al. v. California Air Resources Board, et al., currently in the U.S. District Court for the Central District of California (Case No. 2:24-cv-00801). A final judgment of this case may come close to the deadlines for companies to submit GHG emissions under SB 253. This emphasizes the necessity of being prepared for disclosure because the enforcement of both laws continues without a stay.

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BY KYLE SULLIVAN | ESG Analyst, EBI

In September 2024, the U.S. Securities and Exchange Commission (SEC) disbanded its Climate and ESG Task Force within the Division of Enforcement. Established in March 2021, the Task Force aimed to identify misconduct related to environmental, social, and governance (ESG) issues, including material gaps or misstatements in disclosures about climate risks. It also assessed compliance issues concerning the ESG strategies of investment advisers and funds. The SEC stated that the “expertise developed by the task force now resides across the Division,” indicating that the agency will continue addressing ESG-related matters as part of its broader enforcement strategy.

SCOPE AND OVERVIEW OF THE NEW REGULATION

The dissolution of the Climate and ESG Task Force reflects the political and legal challenges that have hindered SEC rulemaking on climate issues. On April 4, 2024, the SEC issued an order to stay the implementation of the final climate disclosure rules while awaiting the outcome of a consolidated lawsuit in the U.S. Court of Appeals for the Eighth Circuit. The consolidated lawsuit brings together challenges from a diverse coalition, including at least 25 states attorneys general, energy industry companies, and business groups like the U.S. Chamber of Commerce. This administrative stay will remain in effect until the pending litigation is resolved.

KEY TAKEAWAYS AND IMPACT

Nonetheless, regulatory concerns regarding greenwashing are growing, and various state and European Union regulators have recently acted on this front. Even though the Task Force has been disbanded, companies should remain vigilant in monitoring their climate and ESG-related disclosures.

The SEC has taken significant enforcement actions related to ESG-related issues against companies spanning industries such as banking, electronics, manufacturing, and hospitality. These companies faced charges for a range of violations, including misleading investors, failing to adhere to stated ESG policies and procedures, and governance misconduct. These cases highlight the SEC will continue to pursue ESG-related enforcement actions, and companies must recognize that any material misstatement regarding an ESG issue carries the same risks as any other material misstatement.

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BY STEPHANIE TRUEB | ESA Technical Director – Real Estate Services, EBI

On June 24, 2024, the EPA issued a final ruling amending the All Appropriate Inquiries (AAI) Rule to reference ASTM E2247-23 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property allowing its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

SCOPE AND OVERVIEW OF THE NEW REGULATION

The 2024 EPA ruling went into effect August 23, 2024. Key points include:

- This ruling includes the most recent update to the ASTM E2247 standard as being acceptable for parties purchasing properties to comply with all AAI requirements to qualify for one of CERCLA's landowner liability protections as bona fide prospective purchasers, contiguous property owners or innocent landowners. Additionally, entities conducting a site characterization or assessment on a property with a brownfields grant under CERCLA, such as state, local or tribal governments, may use this standard.
- The previous version of the standard, ASTM E2247-16, is still listed as acceptable in the AAI Rule until that standard sunsets one year after the Final Rule issuance or August 23, 2025. This allows a grace period for Environmental Professionals (EPs) who prepare Phase Is and users of their reports to transition to the new standard.
- Both the ASTM E1527-21 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process and the ASTM E2247-23 standards are included as being acceptable to meet the regulatory requirements of AAI in this Final Rule.

KEY TAKEAWAYS AND IMPACT

- The E2247 standard was updated to provide continuity with the E1527 standard. The revised standard includes some adjustments to scope to better fit large undeveloped tracts of land and provides more examples and discussion on application of the standard.
- EPs and users of their reports may be more familiar with ASTM E1527 as it is the most commonly used standard for Phase I preparation. However, the ASTM E2247 standard is geared towards providing a more practical approach to evaluating larger tracts of forestland or rural properties that are generally uniform in size or use. Both standards have the same shelf-life requirements and are intended to identify Recognized Environmental Conditions (RECs). They both include most of the same defined terms and processes such as user responsibilities, search distances, interviews, and site reconnaissance. Differences between E2247 and E1527 mostly relate to the historical research conducted and methods for completing the site reconnaissance. As city directory coverage is less likely available in forestland and rural areas, historical research focuses on aerial photographs, topographic maps and interviews. The standard allows for use of applications such as Google Earth for establishing Areas of Environmental Interest (AEIs) so the site reconnaissance can be targeted to those areas.
- Real estate developers, investors, alternative energy companies developing solar arrays or wind farms, and parties involved in land conservancy should be familiar with the ASTM E2247-23 standard. With this EPA Final Rule, the standard is acceptable for complying with AAI requirements and provides a more practical, efficient approach for assessing large undeveloped or agricultural tracts of land.

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