



Performance-based LEED Decertification— the Good, the Bad and the Maybe

By J. Willcox Dunn III, Esq., of Vandeventer Black, LLP

The U.S. Green Building Council's launch of LEED 2009 caused an immediate outcry over the specter of performance-based LEED "decertification." The concern primarily was based on LEED 2009's addition of Minimum Program Requirements (MPRs) to the previously established LEED prerequisites and credits. The general purpose of the MPRs is to filter out projects unsuitable for the LEED program. For example, MPR 2 states that a project must be "designed for, constructed on, and operated on a permanent location on already existing *land*"—in other words, no boats or airplanes.

One of the MPRs, however, has a prospective rather than a gate-keeping function. MPR 6 states, "All certified projects must commit to sharing with USGBC and/or Green Building Certification Institute all available actual whole-project energy and water usage data for a period of at least 5 years." And therein lies the decertification rub. What does USGBC and/or GBCI intend to do with this data? What, if anything, will happen if USGBC and/or GBCI learns that a LEED-certified building's actual energy and water usage falls short of the LEED rating system criteria?

USGBC also included the following in its initial release of LEED 2009: "NOTE: CERTIFICATION MAY BE REVOKED FROM ANY LEED PROJECT UPON GAINING KNOWLEDGE OF NON-COMPLIANCE WITH ANY APPLICABLE MPR." This note does not expressly link certification revocation to unsatisfactory energy or water usage. The connection between revocation and an MPR requiring the reporting of actual energy and water usage data, however, caused many LEED-watchers to suspect that USGBC/GBCI intended to use the MPR 6 data to monitor building performance and possibly serve as a basis for "decertification" when actual building performance fails to conform to LEED rating system criteria.

Concern over performance-based decertification is understandable given the documented shortcomings of some LEED-certified projects. A 2008 study performed by the New Buildings Institute on behalf of USGBC reported that while LEED-certified buildings are, on the average, 25-30 percent more efficient than the national average, the measured Energy Use Intensity for a

number of buildings in the study was significantly worse than design projections. The NBI's conclusions for relative savings predictions on an individual project basis are similar.

USGBC, itself, acknowledges the gap between design and performance for some green buildings. In a document discussing USGBC's Building Performance Partnership, USGBC states,

There has long been a disparity between how buildings are designed to perform and how they actually perform. The conception that green buildings do not meet higher performance metrics than an average building stems from the reality that green building design, construction and operations teams have not identified a solution to the performance/prediction gap.

The USGBC's November 2009 release of its Supplemental Guidance to the Minimum Program Requirements provided at least some comfort to those worried about potential performance-based decertification. The Supplemental Guidance states, "This MPR does not intend to . . . penalize project teams with buildings that do not perform as well as intended." A few months later, USGBC officials further clarified the purpose and reach of MPR 6. In an article by Rachel Z. Azoff for *Multifamily Executive*, USGBC Communications Manager Ashley Katz was quoted as saying

MPR 6 specifically is an exercise to improve the future iterations of LEED rather than to strip the certification from prior program participants and all information remains confidential. LEED certification is granted based on a building's design and construction at the time certification is sought. LEED certification does not evaluate the ongoing operation or maintenance of a building—there are too many factors that have to do with how the building is operated.

So, in light of the Supplemental Guidance and public statements made by USGBC officials regarding the intent of MPR 6, can USGBC/GBCI "decertify" a LEED-certified project? Absolutely. The USGBC/GBCI's authority to "decertify" or revoke certification is clear. Currently, decertification can occur in at least three ways.

First, according to Scot Horst, senior vice president for LEED, USGBC always has had the inherent power to revoke certification under certain circumstances. "[L]et's say that there was someone out there who lied about the prerequisite information or unintentionally provided inaccurate information. We have always had a policy to go back and say this wasn't what it was represented to be. That is nothing new."

Second, decertification can occur if MPR compliance is in question. The 2009 Supplemental Guidance states, "If it becomes known that a LEED project is or was in violation of an MPR, certification may be revoked, or the certification process may be halted. These situations will be handled on a case by case basis according to GBCI's challenge policy."

Third, GBCI's Certification Challenge Policy not only provides for the revocation of LEED certification, it "encourages" third parties to submit a complaint or report information affecting the grant of LEED certification based on "specific personal knowledge of an event or condition that would prevent a project from satisfying a particular credit, prerequisite, or MPR."

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These three certification revocation mechanisms appear intended to address flaws in the initial LEED certification process, not the failure of actual building performance to comply with LEED criteria. What about performance-based decertification? Hasn't USGBC made it clear through its Supplemental Guidance and public statements that LEED does not evaluate the ongoing operation of a building? Maybe. At least for now. But there is reason to be concerned about the future. Recently, in an article by Franklyn Cater for *National Public Radio*, Rick Fedrizzi, CEO of USGBC, responded to harsh criticism of the LEED certification program by outspoken LEED critic Henry Gifford. Gifford contests the NBI/USGBC claim that LEED-certified buildings are 25-30 percent more efficient than the national average, and points to LEED's lack of performance-based requirements as an Achilles heel for the entire LEED program. As stated by Gifford, "LEED certification has never depended on actual energy use, and it's not going to. You can use as much energy as you want and report it and keep your plaque." In response, Fedrizzi predicted that MPR

6 data will be used to enforce performance in the future. "Once a LEED plaque is assigned to a building, and there is proof that the building is no longer performing the way that it should, there's a very good chance that that information will then result in the ability for USGBC to remove the certification from the building—most likely on our website."

Consistent with Fedrizzi's comments, the upcoming release of LEED 2012 already seems headed in a performance-based direction. The current public comment draft includes a new performance section comprised of a combination of new prerequisites and credits, as well as existing, relocated ones. For example, participation in USGBC's Building Performance Partnership would be a requirement under the new Building-Level Energy Metering Prerequisite. Participation in the BPP also would be required by the new Advanced Energy Metering Credit, which lists its intent as "To provide for the ongoing accountability of building energy consumption over time." With pressure for performance-based criteria mounting from a variety of stakeholders, it should come as no surprise if the final LEED 2012 version includes performance-based criteria for maintaining LEED certification, and potential decertification for performance that fails to conform to the criteria upon which certification was based.

In the meantime, CMs should exercise more care than ever when contracting for services involving a project aspiring to LEED certification, and should continue to avoid any language that smacks of a guarantee regarding initial certification or ongoing building performance. If the day arrives when owners of LEED-certified buildings see their buildings decertified due to deficient ongoing building performance, the era of widespread "LEEDigation" that many have been predicting for some time may become a reality. **CM**

J. Willcox Dunn III, Esq., of Vandeventer Black, LLP in Richmond, Va., serves as an ex-officio member of the CMAA Board of Directors and chair of the CMAA Board Legal Counsel Committee. He can be reached at WDunn@vanblk.com.