

Internal Revenue Service

Number: **200616032**

Release Date: 4/21/2006

Index Number: 142.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: Government

Agency, 11/02/05 - 01/19/05

Date of Communication: November 2, 2005

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB

PRESP-155369-05

Date:

January 19, 2006

Dear :

This letter is in response to your application for designation of (the Project) as a qualified green building and sustainable design project under §§ 142(a)(14) and 142(l) of the Internal Revenue Code (the Code).

Section 701 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357 (the Act) added §§ 142(a)(14) and 142(l) to the Code. In general, §§ 142(a)(14) and 142(l) authorize up to \$2,000,000,000 of tax-exempt private activity bonds to be issued by state or local governments for qualified green building and sustainable design projects. Section 142(l)(1) defines “qualified green building and sustainable design project” as any project meeting certain requirements that is designated by the Secretary of the Treasury (the Secretary), after consultation with the Administrator of the Environmental Protection Agency (the Administrator), as a qualified green building and sustainable design project.

Notice 2005-48, 2005-27 I.R.B. 9 (the Notice), provides that each application for designation of a project as a qualified green building and sustainable design project must be prepared and submitted in accordance with section “APPLICATION REQUIREMENTS” of the Notice. The Notice requires that the application must demonstrate and provide written assurances that the project will satisfy each basic eligibility requirement and must describe in detail the conservation and technology innovation features of the Project.

We have reviewed your application and have concluded that your application does not meet the requirements of the Notice. Below are the principal reasons why your application has not met these requirements.

LEED Certification. Under the green building and sustainable design basic eligibility requirement of LEED certification, Notice 2005-48 provides that the application must

demonstrate and provide written assurances that at least 75% of the square footage of commercial buildings that are part of the project is registered for United States Green Building Council's (the Council) LEED certification and is reasonably expected by the applicant to receive such certification, based on all the facts and circumstances, including statements of the Council, opinions of independent experts in green building and sustainable design, and relevant experience of the project developer. The Notice also provides that the application must include: (1) LEED Letter Templates indicating which LEED credits the applicant intends to pursue and the applicants planned approach to pursuing such credits; (2) documentation demonstrating the applicants plans to design and construct LEED-certified, sustainably-designed buildings, including, where applicable, architectural plans, drawings and specifications, policy statements, contracts, leases and other applicable documents, and other related applicable information; (3) information on how plans to build LEED-certified, sustainably-designed buildings will be implemented through the managements structure; (4) information on any plans to attract broader expertise and perspectives to the project that could support the effort to achieve LEED certification through such means as green building design charettes or consultation with additional green building experts; and (5) information on financial incentives and penalties that will be included in the design, construction, engineering and other building contracts and subcontracts to tie a part of the contractors' and subcontractors' compensation to their level o success in designing and constructing LEED-certified, sustainbly-designed buildings.

Your application does not reasonably demonstrate and provide any assurances that the Project has met the LEED Certification requirement. Your application merely states that % of the Project has been registered with the Council, that a review by a "green building professional" of , which is not part of the Project, has shown that may receive additional LEED credits, and that, if awarded an allocation under the Brownfields Demonstration Program, the applicant will design and build the Project to receive LEED Certification. However, your application does not support these statements with any letter from or to the Council acknowledging or requesting such registration, nor does it include LEED Letter Templates, architectural plans, drawings, or specifications, or documents demonstrating the engagement of green building professionals throughout the Project management structure, or the implementation of appropriate financial incentives and disincentives as required under the Notice.

State and local support. The Notice requires that the application demonstrate and provide written assurances that the project will receive state or local government resources that will support the project in the amount equal to at least \$5,000,000 at any time between October 22, 2001, and the maturity of the bond issued under § 142(l). For this purpose, "resources" includes tax abatement benefits and contributions in kind.

Your application states that the will receive approximately over \$ of tax-increment financing. However, your application indicates that, other than \$ already received by the , the

has entered into a tax-increment financing agreement with the _____ in the amount of \$ _____. Your application does not describe, demonstrate or provide written assurances that the Project, which, as your application describes, includes _____, will receive state or local government resources of at least \$5,000,000 calculated as provided in the Notice. In addition, your application does not include any documentation supporting these statements based upon which we may conclude that the Project will receive the requisite state or local support.

Employment. The Notice further requires that the project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural states) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural states). Your application provides insufficient information that would reasonably demonstrate and provide written assurances that the Project will meet this requirement. Specifically, your application indicates that, based on the employment for _____ and a _____ study (the _____ Study) the _____ is projected when completed to employ “nearly _____ jobs, the majority of which would be attributable to the Project.” Your application also indicates that the Project is estimated to generate _____ construction jobs. Your application, however, fails to indicate the amount of full time equivalents for the Project (during construction or after completion) and fails to demonstrate or provide written assurance that the information indicated is based on reasonable assumptions. Merely stating that the information is based on employment during construction of _____ and the _____ Study does not meet the requirements of the Notice.

Goals for Conservation and Technology Innovation. The Notice further provides that, for purposes of accomplishing the goals for conservation and technology innovation of the Brownfields Demonstration Program, the application must describe the amount of electric consumption (in megawatt hours) reduced by the project as compared to conventional construction and conventional generation, the amount of sulfur dioxide daily emissions reduced by the project as compared to coal generation, the amount of the gross installed capacity of the project’s solar photovoltaic capacity measured in megawatts, and the amount, in megawatts, of the project’s fuel cell energy generation capacity, which includes the fuel cells’ generation of thermal and electrical energy used by the project.

Your application indicates that the Project’s energy consumption has not been modeled, and that, therefore, the amount of electric consumption reduced by the project cannot be determined. Similarly, your application fails to include any information on the sulfur dioxide emission reduction by the Project, the gross installed solar photovoltaic capacity of the Project, or the fuel cell capacity of the Project. The information provided in your application with respect to the goals for conservation and technology innovation

described above and your representative's request to supplement the application with information as it is generated does not meet the requirements of the Notice.

Accordingly, we conclude that the information submitted in your application for designation of the Project as a qualified green building and sustainable design project under the Brownfields Demonstration Program does not meet the requirements of Notice 2005-48 and, therefore, that the Project may not be designated as a qualified green building and sustainable design project under §§ 142(a)(14) and 142(l).

We appreciate your submission of the application for our consideration and encourage you to continue to pursue your plans for constructing a green building and sustainable design project.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Assistant Chief Counsel, (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)

By: Timothy L. Jones
Senior Counsel
Tax-Exempt Bonds Branch

cc: