

Internal Revenue Service

Number: **200616033**

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 -01/19/06
Date of Communication: November 2, 2005

Person To Contact:

, No.

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB
PRES-156571-05

Date:

January 19, 2006

Dear :

This letter is in response to the application dated , 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, after consultation with the Administrator of the Environmental Protection Agency, 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 does not meet these requirements.

LEED Certification. Under the green building and sustainable design basic eligibility requirement of LEED certification, the Notice 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 charrettes 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 meets this requirement. Your application fails to state that 75% of the commercial building of the Project has been registered with the Council, fails to 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 provided in the Notice. Your representations that the owner or developer of the Project plans or intends to register the commercial building space with the Council and implement the LEED design through the Project construction management structure and provide construction contract incentives and disincentives is insufficient for purposes of the LEED Certification requirement 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 indicates that the _____ has committed the state job tax credit incentive projected to be more than \$ _____. However, the letter from the _____ supporting the application states that the incentives will go to the industries locating at the site and that further incentives will be evaluated on a project-by-project basis. The letter also states that all incentives are evaluated individually and must meet the approval of the _____ before any formal commitment can be made. Neither the letter from the _____ nor any other submission

from you provides conclusive support that there is a commitment by any state or local government to provide the Project with resources in the amount of at least \$5,000,000.

Employment. The Notice 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 fails to provide the basis for the projection that the Project will provide _____ full time equivalents when completed and _____ full time equivalents during construction. The independent analysis submitted as Appendix A to your application provides no information to support the conclusion that the projected employment at the Project is reasonable.

Goals for Conservation and Technology Innovation. The Notice 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 fails to provide any information as to the amount of reduction in electric consumption and daily sulfur dioxide emissions by the Project. Although your application provides that the Project will expand the domestic solar photovoltaic market in the United States by 75 percent as compared to the expansion of that market from 2001 to 2002, it fails to provide any documentation reasonably demonstrating that the Project is will achieve that goal. Similarly, although your application indicates that the Project will use at least 25 megawatts of fuel cell generation, it fails to provide any documentation reasonably demonstrating that the Project will achieve that goal. Your statement that documentation with respect to the goals for conservation and technology innovation shall be provided as it is generated is insufficient to meet the requirements of the Notice.

Finally, your application raises significant questions as to whether it is reasonable to expect that the Project will be completed as described in the application because, as indicated in the letter dated _____, from the _____ to the _____, none of the parts of the Project have received building permits and certain parts of the Project are inconsistent with the _____ Land Use Plan and Zoning ordinance.

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: