

Order 147-16/17

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ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AMENDING THE GUIDELINES OF THE
PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

ORDERED, that the guidelines of the Portland Brownfields Cleanup Revolving Loan Fund, a loan program administered by the Portland Development Corporation, are hereby amended in substantially the form attached.

PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND

Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11-17-08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

The Portland Brownfields Cleanup Revolving Loan Fund (BCRLF) provides loans and subgrants to assist those interested in remediating and redeveloping Brownfields sites within the City of Portland. Brownfields are abandoned, idled or underused industrial or commercial properties with real or perceived environmental contamination. The funding for this program comes from the U.S. Environmental Protection Agency (EPA) and is authorized by the City of Portland.

1. Program Goals

- (a) ~~To finance the removal of CERCLA hazardous substances from Brownfields sites within the City of Portland.~~
- (b) ~~To demonstrate the feasibility of establishing a sustainable revolving loan fund program~~ To assist in financing the cleanup of Brownfields sites within the City of Portland, properties, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment, and eliminating the public health risks associated with these sites.
- (c) ~~To assist the remediation and redevelopment of Brownfields sites within the City of Portland.~~

2. Program Objectives

- (a) To create an incentive for private investment in ~~the~~ Brownfields properties/sites areas within of the City of Portland;
- (b) To ~~assess and~~ safely clean up Brownfields properties based on end use in order to facilitate their sustainable use;
- (c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and
- (d) To prevent the creation or spread of contamination on or between properties to protect the public health by minimizing exposure to toxic materials in the environment.

3. Program Description

This program is designed to encourage the cleanup of eligible [Brownfields](#) sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites. [Assistance is provided through low interest loans and subgrants.](#) Subgrants are available to non-profits and [to governmental entities.](#) .

4. Program Budget

The funding for the Portland Brownfields Cleanup Revolving Loan Fund is provided by the U.S. Department of Environmental Protection and authorized by the [Portland City Council](#).

5. Project Threshold Requirement:

- (a) The property to be assisted is located within the City of Portland.
- ~~(b)~~ The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;
- ~~(c)~~ [The property must meet the definition of a Brownfield and be enrolled in the Maine Voluntary Response Action Program \(VRAP\) for site cleanup;](#)
- ~~(d)~~ [The property must have had adequate environmental assessments completed in order to understand site conditions and necessary remediation \(e.g. Phase I Environmental Site Assessment and/or Phase II Environmental Site Assessment\);](#)
- ~~(b)(e)~~ [The site meets the EPA eligibility requirements;](#)
- ~~(e)(f)~~ The project applicant or owner is not a generator or transporter of contamination to the site;
- ~~(d)(g)~~ The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs; and
- ~~(e)(h)~~ The project applicant or owner is not in environmental non-compliance with Federal or State agencies.

6. Eligible Applicants/Entities

- (a) Publicly owned, either directly by a municipality or indirectly through a quasi- public entity such as a community development corporation; or
- ~~(b)~~ ~~(b)~~ Privately-owned by current or prospective commercial property owners, banks, developers, [non-profits](#), etc.;
- ~~(c)~~ [Applicant must own or be in the process of obtaining ownership at the time of application.](#)

7. Eligible Activities

Cleanup actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including:

(a) Preparation of a Community Relations Plan (CRP), Analysis of Brownfields Cleanup Alternatives (ABCA); public meeting to present the ABCA; and preparation of meeting minutes;

~~(a)~~(b) Fences, warning signs or other security or site control precautions;

~~(b)~~ (c) Drainage controls;

~~(d)~~ (e) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;

~~(e)~~ (f) Capping of contaminated soils;

~~(f)~~ (g) Using chemicals and other materials to retard the spread of the release or mitigate its effects;

~~(f)~~ (g) Excavation, consolidation, or removal of ~~highly~~ contaminated soils from drainage or other areas ~~the site~~;

~~(h)~~ (g) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;

~~(h)~~ (i) Containment, treatment, disposal, or incineration of hazardous materials;

~~(j)~~ (i) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;

~~(k)~~ (j) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; and

~~(l)~~ (k) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

(m) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup

(n) Environmental Insurance Premiums.

8. Ineligible Activities

- (a) Pre-cleanup environmental response activities (i.e., such as site assessment, identification, and characterization); however, the Lead Agency may request EPA approval for limited site assessment on a case-by-case basis when necessary to ensure protection of the environment and public health through cleanup action.
 - (b) ~~Cleanup of a naturally occurring substance, products that are part of the structure of and result in exposure within residential building or business or community structures (e.g. interior lead-based paint contamination or asbestos which results in indoor exposure), or public or private drinking water supplies that have deteriorated through ordinary use—except as determined on a site-by-site basis and approved by the U.S. EPA Headquarters, consistent with CERCLA 104(1)(3) and (4);~~
 - (c) Monitoring and data collection necessary to apply for, or comply with environmental permits under other ~~f~~Federal and state laws, unless such a permit is required as a component of the cleanup action; and
 - (d) Development activities that are not removal actions (e.g. construction of a new facility or marketing of property).
- (e) Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
- (f) To pay for a penalty or fine;
 - (g) To pay a federal cost share requirement (for example, a cost-share required by another Federal subgrant) unless there is specific statutory authority;
 - (h) To pay for response costs at a Brownfields site for which the recipient of the subgrant or loan is potentially liable under CERCLA Section 107;
 - (i) To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for cleanup;
 - (j) Unallowable costs (e.g. lobbying and fund raising) under applicable OMB Circulars.

9. **Financing Terms:**

The following terms will guide the actions of the ~~Downtown Portland Corporation~~ Portland Development Corporation (PDC):

- (a) Loan amount for eligible cleanup activities will be limited to the balance of the loan fund, but generally range from a minimum of \$150,000 to a maximum of \$300,000, and will be negotiated based on project redevelopment needs. Subgrants up to \$200,000 each are available for eligible cleanup activities;
- (b) Maximum loan term is up to will be 105 years, though shorter terms are preferred; The actual term is negotiable on a case-by-case basis, and may

- include a longer amortization period with a balloon at the end of the designated term. Projects must justify the need for the maximum term.
- ~~(e)~~ (c) Interest rate will be determined by the ~~Downtown Portland Corporation~~PDC, though Brownfields loans are usually lent at a lower interest rate;
 - (d) Brownfields site, business assets, outside collateral, and/or personal guaranties may be required as security;
 - ~~(d)~~(e) Environmental indemnification and/or lenders environmental insurance may be required;
 - (f) Evidence of a cost share of at least 20% of the loan or subgrant amount will be required of all Applicants/Borrowers; In special circumstances, as determined by the PDC, the cost share may be reduced or waived.
 - (g) Cost share monies will be specifically utilized for eligible cleanup activities;
 - (h) As applicable, Borrower/Subgrantee will be required to utilize Davis Bacon Wage compliance requirements and provide backup verifying compliance;
 - (i) Loan/Subgrant drawdown requests with sufficient backup of eligible cleanup activities will be reimbursed at the PDC approved loan or subgrant proportion to cost share prior to final Drawdown.
 - ~~(j) Application fee structure shall be determined by the Downtown Portland Corporation;-~~
 - ~~(e)~~(k) Legal fees for drafting loan documents.

10. Requests for Amendment to Loan Terms:

A one percent fee will be applied for requests for amendments to loan terms, as well as costs for legal fees and recording fees associated with preparing any additional loan documents/modifications. The one percent fee will be based on the current loan balance at the time of the request. This one percent fee will be applied to those loan amendments which require the PDC Assistant Secretary ~~Commercial Loan Officer~~ to bring the request to the ~~DPC~~-PDC Board of Directors based on substantive changes.

The ~~Commercial Loan Officer~~ PDC Assistant Secretary has the discretion to determine whether requested loan amendments should be brought to the Board or done administratively. If done administratively, the ~~Commercial Loan Officer~~ PDC Assistant Secretary will confer with the Business Programs Manager and the Associate Corporation Counsel ~~the Economic Development Division Director to determine the fee and the fee will then be determined~~ based on hourly rates of pay, as well as recording fees and legal hourly fees.

11. Underwriting Criteria:

Project review will include, but not be limited to, the following factors:

- (a) Location of the in-a Brownfields site within the City of Portland;
- ~~(b) (b)~~ Necessity of loan funds to make the project economically feasible ~~and at the same time has a high potential for economic success.~~
- (c) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the RLF Site Manager ((Qualified Environmental Professional (QEP)) to assess that applicant is not a cleanup and/or business risk.

12. Application Review Criteria

The ~~Downtown Portland Corporation~~PDC, with input and recommendations made by ~~both~~ the Maine Department of Environmental Protection, EPA, City's QEP and the City's Economic Development Department (EDD) Planning and Urban Development Department, will review project proposals to determine eligibility and negotiate with applicant(s) to determine the least amount of public resources necessary to make the project(s) feasible.

The loan approval process shall be carried out efficiently and pragmatically to insure loans are approved in a timely manner, cleanup plans are implemented and redevelopment projects are completed on schedule to maximize the community benefit goals of the projects. The actions to be taken are:

- (a) The applicant will meet with the City and City's QEP to discuss the project;
- (b) Applicant will complete the City's RLF Application and provide supporting documentation for review by the EDD and QEP;
- (c) The City's QEP and Maine DEP ~~epartment of Environmental Protection~~ will reviews the environmental assessments and cleanup plan summary. If the Applicant's ~~Borrower~~, site cleanup activities and preliminary project costs are eligible ~~under the plan~~, then City's QEP will prepare a summary memo (approval or denial) for review by the the-Maine DEP~~partment of Environmental Protection, the EPA and the EDD. prepares an Approval memo signed by both themselves and the Planning and Urban Development Department authorizing the Borrower to prepare a draft Engineering Evaluation Cost Analysis (EE/CA). The Planning and Urban Development Department will then prepare a Community Relations Plan (CRP) and the Downtown Portland Corporation~~
- (d) The underwriter will proceed with the review and analysis of the financial components of the loan application and prepare a report for the PDC with recommended terms and conditions;
- ~~(a)~~
- ~~(b)~~(e) The PDC will be presented with the loan report and, based on an

~~favorable analysis of the financial qualifications of the applicant and the merits of the project, the Downtown Portland Corporation PDC will vote to approve or disapprove of the loan/subgrant request including terms and conditions prepares a loan approval memo;~~

~~(e) Based on the loan approval memo, the Downtown Portland Corporation in cooperation with the Maine Department of Environmental Protection establishes the loan terms and conditions;~~

~~(f) The EDD will prepare a loan commitment letter for the Applicant/Borrower , including terms and conditions.~~

~~(g) Once the commitment letter is fully executed,~~

~~1. The Applicant/Borrower and their QEP will prepare a Draft Community Relations Plan (CRP) and Draft Analysis of Brownfields Cleanup Alternatives (ABCA). The Draft CRP and Draft ABCA will be submitted to the Maine DEP and EPA for approval and comment. Upon comment receipt and incorporation, the draft ABCA will be presented at a public hearing and will be subject to a 30-day public comment period;~~

~~2. The City attorney will draft loan documents which will include but not be limited to the loan agreement, promissory note, mortgage agreement and any other documentation as necessary.~~

~~(d) The loan approval memo and loan terms and conditions are preliminarily approved by the Downtown Portland Corporation;~~

~~The Downtown Portland Corporation approves the loan subject to a 30-day public comment period on the draft EE/CA and the completion and acceptance of the EE/CA and CRP by the Planning and Urban Development Department EDD;~~

~~(e)~~

~~(f) The loan documents are prepared (e.g., loan agreement, promissory note, mortgage agreement and other credit enhancement agreements);~~

- ~~(g)~~ The Maine Department of Environmental Protection and the EPA (at their discretion) review the draft EE/CA;
- ~~(h)~~ The EPA Community Relations Coordinator approves the CRP and the Planning and Urban Development Department implements the CRP which includes a 30-day public comment period on the draft EE/CA;
- ~~(i)~~~~(h)~~ Based on the CRP, a final draft of the ~~EE/ABCA~~ is prepared by the Applicant/Borrower, which incorporates comments received by MaineDEP, EPA and the public. ~~and the Maine Department of Environment Protection prepares a Response Summary of public comments and issues an RLF Decision Document noting the cleanup alternative chosen;~~
- ~~(j)~~~~(i)~~ Once the CRP and ABCA has been finalized, ~~Based on the RLF Decision Memo~~, the Applicant/Borrower prepares a Scope of Work for the cleanup activities, including a detailed budget and work schedule, a Health and Safety Plan, and a Quality Assurance Project Plan (the QAPP will need to be reviewed by Maine DEP and EPA, prior to finalization); and
- ~~(k)~~~~(j)~~ The loan agreement, promissory note, mortgage agreement, and any other credit enhancement agreements loan documents -are signed. Any loan fees are paid.

The City will request the following information from the Applicant to make the loan or subgrant this determination:

Applicant Information

- (a) Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
- (b) Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
- (c) Management Overview: resumes of principals; and
- (d) Credit References: financial institutions and other creditors.

Site Conditions

- (a) Environmental assessments (e.g., Phase I and II) in accordance with American Society for Testing and Materials (ASTM) Standards);
- (b) Information regarding the status of the Applicant/borrower as a potentially responsible party at the site;
- (c) Information on environmental compliance history;
- (d) Provide- Information on whether or not the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
- (e) Provide- Information on whether or not the Applicant is a generator or transporter of contamination at the site; and
- (f) Provide- Information on whether or not the Applicant falls under a statutory exemption from liability; or that the EPA could use its

enforcement discretion and not pursue the party as a responsible party under CERLA if the Applicant is currently the owner/operator of the site.

Cleanup Plan

Cleanup Plan Summary: cleanup plan including a technical description of work to be done, [eligible cleanup activities](#) and costs estimates [for cleanup and project redevelopment](#). [Cleanup Plan should also document other funding sources for cleanup and eligible activities to be utilized for cost share.](#)

Redevelopment Plan

- (a) Financing Project: a description of the cleanup project and the reuse plan;
- (b) Business Plan: a description of the business goals, strategies and action plans; and
- (c) Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

Community Benefits

- [Employment Impact](#): number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site.
- [Investment Impact](#): Serves as an incentive for investment in Brownfields areas.
- [Housing Units](#): Available for the creation of Housing Units located in Brownfields areas.