

Order 157-18/19

Passage: 8-0 (Mavodones absent) on 2/20/2019

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
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**CITY OF PORTLAND**  
IN THE CITY COUNCIL

Effective 3/2/2019

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER PROPOSING BROWNFIELDS ASSESSMENT PROGRAM GUIDELINES,  
AND AMENDING GUIDELINES FOR THE BROWNFIELDS REVOLVING LOAN  
FUND PROGRAM AND THE BROWNFIELDS CLOSEOUT FUND**

**ORDERED**, that that the Portland City Council, acting in its capacity as sole Corporator of the Portland Development Corporation, hereby approves the guidelines for the Brownfields Assessment Program in a form substantially the same as those attached hereto; and

**BE IT FURTHER 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 hereto; and

**BE IT FURTHER ORDERED**, that the guidelines for the Brownfields Closeout Fund are hereby amended in substantially the form attached hereto; and

**BE IT FURTHER ORDERED**, that the City Manager is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of this Order.

## Portland Brownfields Assessment Program Guidelines

The Portland Brownfields Assessment Program (Fund #281) is designed to encourage the assessment of eligible Brownfields sites and activities associated with evaluating the potential for contamination on a property with either documented contamination or perceived contaminant conditions. Types of redevelopment projects that may seek assessment funds include commercial, public open space and recreation, and multi-family residential of no less than 10 units with at least 50% of the residential units priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority. Assistance is provided through covering the cost of assessment activities including but not limited to Phase I and Phase II Environmental Site Assessments and Cleanup Planning for properties that are deemed eligible by the U.S. Environmental Protection Agency (EPA).

Brownfields Definition: A Brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

Requests will be submitted via an Assessment Application to the Economic Development Department (EDD).

### 1. Program Goal

Finance the assessment of Brownfields properties, thereby determining whether or not they are contaminated and will need remediation/cleanup. With this information identified, properties can be made available for redevelopment and contribute to the revitalization of the community, creation of jobs, improvement of the environment, and elimination of public health risks associated with those sites that are found to be Brownfields.

### 2. Program Objectives

- (a) To create an incentive for private investment in Brownfields properties in the City of Portland;
- (b) To assess properties to determine the level of contamination, if any, in order to facilitate their sustainable reuse;
- (c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate eventual Brownfields cleanup efforts; and
- (d) To prevent the exacerbation, creation or spread of contamination on or between properties to protect the public health by minimizing exposure to hazardous materials in the environment.

### **3. Eligible Project Applicants**

- (a) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;
- (b) The project applicant or owner is not considered potentially responsible for the contamination on the property ;
- (c) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
- (d) The project applicant or owner is not in environmental non-compliance with Federal or State agencies at the subject property;
- (e) The project applicant can be the City of Portland, non- profit or private property owner or prospective commercial property owner, bank, developer, etc.;

### **4. Property Threshold Requirements**

- (a) The property to be assessed is located within the City of Portland;
- (b) The property meets EPA eligibility requirements;
- (c) Funds can be used for assessment activities including but not limited to Phase I and Phase II environmental site assessments and Cleanup Planning.

### **5. Eligible Activities**

- (a) Phase I Environmental Site Assessments performed in accordance with EPA All Appropriate Inquiries Final Rule and most current version of ASTM E1527;
- (b) Phase II Environmental Site Assessments and remediation/cleanup planning activities;
- (c) VRAP applications and fees;
- (d) Programmatic costs for the City of Portland and its Qualified Environmental Professional (QEP) to manage and oversee the work being performed under this Program.

### **6. Ineligible Activities**

Brownfields inventory activities (with the exception of a City-initiated Brownfields inventory), remediation and or cleanup activities and development activities (e.g. construction of a new facility or marketing of a property).

### **7. Review Criteria**

The project/property for which an applicant is applying for City of Portland Brownfields Assessment Program funds may be evaluated using any or all of the following criteria:

- A) Economic/Financial Benefit
  - 1. Potential for redevelopment;

2. Developer interest in the site;
3. Potential for job creation, workforce/affordable housing, and/or sustainable economic development;
4. Financial feasibility for additional assessment and/or future cleanup/remediation of contamination;
5. Ability to leverage additional funding or other resources for cleanup and remediation after the assessment activities have been completed.

B) Environmental Concerns/Benefits

1. Understanding of the potential reduction, elimination and/or control of threats/risks to human health and the environment based on the assessment activities conducted;
2. Anticipated creation, preservation and/or maintenance of open space once assessment activities have been completed;

C) Feasibility/Sustainability of Project

1. Likelihood for successful redevelopment, reuse and/or revitalization;
2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;
4. Interest and presence of a willing owner, buyer, or other stakeholder to invest in the property and to provide access to the property for investigation.

## **8. Application Review Process**

Requests will be submitted via an Assessment Application to the Economic Development Department (EDD). All requests will be reviewed and approved by EDD staff and the City's Qualified Environmental Professional (QEP). At every PDC meeting, the Board will be provided with updates on the status of the Assessment Program Funds and the projects that are being assisted by them.

**PORTLAND BROWNFIELDS CLEANUP REVOLVING  
LOAN FUND PROGRAM**

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

**Amended by Corporator at 11/7/08 Meeting adding an amendment for Requests for Amendment to Loan Terms.**

**Amended by Corporator at 3/6/2017 Meeting.**

The Portland Brownfields Cleanup Revolving Loan Fund Program (BCRLF)(Fund # 280) 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. is designed to encourage the remediation/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.

The purpose of this Program is to facilitate the cleanup and reuse of Brownfield properties for commercial, public open space and recreation, and multi-family residential of at least 10 units in a project. At least 50% of the residential units must be priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority.

Program assistance is provided through low interest loans and subgrants, with subgrants available to non-profits. Per the EPA Revolving Loan Fund Terms and Conditions, the City may not provide a subgrant to itself or another component of its own unit of government or organization.

Brownfields Definition: A brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

The funding for this Program funding comes from the U.S. Environmental Protection Agency (EPA) and is authorized by the ~~City of~~ Portland City Council.

**1. Program Goal**

To assist in financing the cleanup of Brownfields sites within the City of Portland, 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.

## 2. Program Objectives

- (a) To create an incentive for private investment in Brownfields properties/sites with in the City of Portland;
- (b) To safely clean up Brownfields properties based on end use in order to facilitate their sustainable reuse;
- (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 exacerbation, 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 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 Agency (EPA) and authorized by the Portland City Council.

## 35. Eligible Project Applicants

- (a) The project applicant or owner is not considered potentially responsible for the contamination on the property;
- (b) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
- (c) The project applicant or owner is not in environmental non-compliance with Federal or State agencies.
- (d) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;

## 4. Property Threshold Requirements

- (e) The property to be assisted is located within the City of Portland;
- ~~(a)~~
- (b)(f) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;

~~(e)(g)~~ The property must be eligible to apply to meet the definition of a Brownfield and be enrolled in the Maine Voluntary Response Action Program (VRAP) for site cleanup;

(h) 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);

~~(d)~~

(i) The site property meets the EPA eligibility requirements;

~~(e)~~

~~(f)~~ The project applicant or owner is not a generator or transporter of contamination to the site;

~~(g)~~ The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs; and

~~(h)~~ The project applicant or owner is not in environmental non-compliance with Federal or State agencies.

## **56. Ownership Eligibility of Applicants/Entities**

~~(a)~~ Publicly or privately owned by current or prospective property owners, banks, developers, etc., to seek loans; ~~either directly by a municipality or indirectly through a~~

~~(a)~~ quasi-public entity such as a community development corporation ~~Privately-owned by current or prospective non-profit owners to seek loans and/or subgrants;~~ ~~or~~

~~(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;

~~(e)(d)~~ Applicant cannot be potentially liable under CERCLA Sec. 107 for contamination on the property.

## **67. 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 but not limited to:

- (a) Preparation of a Maine Department of Environmental Protection (DEP) VRAP application and associated application fee, Community Relations Plan (CRP), Analysis of Brownfields Cleanup Alternatives (ABCA); public meeting to present the ABCA; and preparation of meeting minutes;
- (b) Fences, warning signs or other security or site control precautions;
- (c) Drainage controls;
- (d) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;

- (e) Capping of contaminated soils;
- (f) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- (g) Excavation, consolidation, or removal of contaminated soils from drainage or other areas;
- (h) Abatement of hazardous building materials including asbestos, lead paint, mold and PCBs;
- (h) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
- (i) Containment, treatment, disposal, or incineration of hazardous materials;
- (j) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;
- (k) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; ~~and~~
- (l) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements; ~~and~~
- (m) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup;
- (n) Environmental Insurance Premiums; ~~and~~
- o) Programmatic costs for the City of Portland and its QEP to manage and oversee the work being performed under this Program.

## **78. Ineligible Activities**

- (a) Pre-cleanup environmental response activities (i.e. 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) Monitoring and data collection necessary to apply for, or comply with environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action; ~~and~~
- (c) Construction, demolition and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use. Development activities that are not removal actions (e.g. construction of a new facility or marketing of property).
- (d) Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
- (e) To pay for a penalty or fine;
- (f) To pay a federal cost share requirement (for example, a cost-share required by another Federal subgrant) unless there is specific statutory authority;
- (g) 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;



- (h) To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for cleanup;
- (i) Unallowable costs (e.g. lobbying and fund raising) under applicable OMB Circulars.

## **89. Financing Terms**

The following terms will guide the actions of the Portland Development Corporation (PDC) on behalf of the City of Portland for cleanup remediation loans and subgrants:

- (a) Loan amount for eligible cleanup activities will be limited to the balance of the loan fund, but generally range from a minimum of \$1050,000 to a maximum of \$300,000, and will be negotiated based on project redevelopment needs. Subgrants up to \$200,000 are available for eligible cleanup activities;
- (b) Maximum loan term is up to 10 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.
- (c) Interest rate will be determined by the 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;
- (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 and or eligible in-kind cleanup activities 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 dDrawdown (e.g., 80% of eligible activities will be reimbursed by the City, the remaining 20% will be considered as the Applicants cost share and shall be paid by the Applicant).

## **910. Requests for Amendment to Loan Terms**

A one percent fee will-may 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 to bring the request to the PDC Board of Directors based on substantive changes.

The City's Economic Development Director (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 PDC Assistant Secretary will confer with the Business Programs Manager and the Associate Corporation Counsel to determine the fee based on hourly rates of pay, as well as recording fees and legal hourly fees.

#### **140. Underwriting Criteria**

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

- ~~(a) Location of the Brownfields site within the City of Portland;~~
- ~~(b)~~(a) Necessity of loan and/or subgrant funds to make the project economically feasible with the least amount of public resources.
- ~~(c)~~(b) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the the RLF Site Manager ((Qualified Environmental Professional ((QEP)) City contracted underwriter to assess that applicant is a not a cleanup and/or business risk.

#### **121. Application-Overall Review Criteria**

The application for City of Portland Brownfields RLF funding will be evaluated using some or all of the following criteria:

- (a) Cleanup activities are eligible
- (b) Completeness of application
- (c) Sufficient Brownfields funds available
- (d) Economic/Financial benefit(s)
  - 1. Potential for redevelopment;
  - 2. Developer interest in site;
  - 3. Potential for job creation, workforce/affordable housing and/or sustainable economic development;
  - 4. Financial feasibility for cleanup/remediation of contamination
  - 5. Ability to leverage additional funding or other resources for cleanup/remediation.
- (e) Environmental benefit(s)
  - 1. Potential reduction, elimination and/or control of threats/risks to human health and the environment;
  - 2. Creation, preservation and/or maintenance of greenspace.
- (f) Community benefit(s)

1. Likelihood for successful redevelopment, reuse and/or revitalization
2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;
4. Interest and presence of a willing owner, buyer or other stakeholder to invest in the property and to provide access to the property for cleanup.

## 12. Application Review Process

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

Remediation/cleanup plans should be implemented efficiently and redevelopment projects completed on schedule and within identifiable cleanup budgets. The actions to be taken, including PDC review, are as follows:

~~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: is as follows:~~

- ~~The applicant will meet with the City and City's QEP to discuss the project;~~
- ~~(a) Applicants seeking funds for remediation/cleanup are required to be enrolled in the Maine (VRAP) or in the process of applying (that is, VRAP application and associated workplan and VRAP fees are eligible for RLF reimbursement) ;~~
  - ~~(b) Applicant will complete the City's Brownfields RLF Application (Part 1) and provide it along with ESAs I and II and evidence of VRAP submittal and provide supporting documentation for review by the EDD and QEP;~~
  - ~~(a)(c) Applicant or QEP will prepare EPA Site Eligibility form; EDD submits to EPA for approval;~~
  - ~~(b)(d) The City's QEP and Maine DEP will review the environmental assessments and cleanup plan summary in addition to the Part 1 RLF Application. If the Applicant's site cleanup activities and preliminary project costs are eligible, the City's QEP will prepare a summary memo to the EDD (approval or denial) for review by the Maine DEP, the EPA and the EDD;:-~~
  - ~~(e)(e) Applicant submits Part II RLF application (financial backup). The underwriter will proceed with the review and analysis of the financial components of the loan and/or subgrant application and prepare a report~~

for the PDC with recommended terms and conditions;

~~(d)~~(f) The PDC will be presented with the loan report and, based on an analysis of the financial qualifications of the applicant and the merits of the project, the PDC will vote to approve or disapprove of the loan/subgrant request including terms and conditions ;

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

~~(f)~~(h) Once the commitment letter is fully executed:

1. The ~~Applicant~~/Borrower/Subgrant Recipient 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 community meeting 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. The loan documents and RLF Agreement with City shall include attachments including but not limited to a copy of the deed, a schedule for the cleanup activities, and costs for eligible activities associated with the cleanup.

~~(g)~~(i) Based on the community meeting CRP, a final draft of the ABCA is prepared by the ~~Applicant~~/Borrower/Subgrant Recipient, which incorporates comments received by Maine DEP, EPA and the public;

~~(j)~~ Once the CRP and ABCA has ~~ve~~-been finalized, the Applicant/Borrower prepares ~~a Scope of Work for the cleanup activities, including a detailed detailed cleanup~~ budget and work schedule, a Health and Safety Plan, and a Quality Assurance Project Plan if needed (the QAPP will need to be reviewed by Maine DEP and EPA, prior to finalization); and

~~(h)~~(k) Borrower/subgrant recipient acknowledges that Davis Bacon wage compliance is mandatory for receipt of Brownfields funds;

~~(l)~~ The loan agreement, promissory note, mortgage agreement, and any other loan documents are signed. Any loan fees are paid;

~~(i)~~(m) The Applicant shall prepare a project sign to be posted at the site prior to initiation of cleanup activities listing at a minimum the City, MEDEP, EPA and contact information for the Applicant's QEP. A draft mockup of the sign shall be submitted to the City for approval and provided to DEP and EPA.

## City Checklist for Applicants

The ~~City will request the following information from the~~ is a checklist of information needed from Applicants: Applicant to make the loan or subgrant 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 Related 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/ as a potentially responsible party at the site;
- (c) Information on environmental compliance history;
- (d) 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) Information on whether or not the Applicant is a generator or transporter of contamination at the site; and
- (f) 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.

### Remediation 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. The source of the 20% cost share of monies and or eligible in-kind services/materials must be provided.

### 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

- (a) 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.
- (b) Investment Impact: Serves as an incentive for investment in Brownfields areas.
- (c) Multi-Family Housing~~Housing Units~~: Available for the creation of multi-family housing~~Housing Units located~~ in Brownfields areas.
- (d) Public open space and recreation acreage for cleanup located in the brownfields area.
- (e) Any other community benefits.

**PORTLAND BROWNFIELDS CLOSEOUT CLEANUP REVOLVING LOAN  
FUND PROGRAM**

**USING CLOSEOUT BROWNFIELDS FUNDS**

**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.**

**Amended by Corporator at 12-16-13 Meeting for Using Brownfields Closeout Funds.**

The Portland Brownfields Closeout Fund Program (Fund #278) is designed to encourage the environmental assessment and remediation/ cleanup of eligible 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.

The purpose of the Program is to facilitate the assessment, cleanup and reuse of Brownfield properties for commercial, public open space and recreation, and multi-family residential of at least 10 units in a project. At least 50% of the residential units must be priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority.

Program assistance is provided through direct funding of assessment activities including but not limited to Phase I and II environmental site assessments and through low interest loans and subgrants for remediation/cleanups. Subgrants are available to non-profits. Per the EPA Revolving Loan Fund Terms and Conditions, the City may not provide a subgrant to itself or another component of its own unit of government or organization.

Brownfields Definition: A brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

All work under this Program is to be completed in accordance with the requirements outlined in the Closeout Agreements between the U.S. Environmental Protection Agency (EPA) and the City of Portland. Program funding was provided by the EPA and authorized by the Portland City Council.

**Use of Closeout Funds Relative to Other Brownfields Funds**

Closeout Funds will be considered for RLF assessment projects and cleanup projects that are less than \$100,000. Closeout funds do not trigger the significant level of public

involvement, review and reporting required by the active (current) RLF Brownfields Fund Program and will, thereby, facilitate faster project completion at lower consultant costs. As an example, use of Closeout Funds for a cleanup loan or subgrant do not require a Community Relations Plan (CRP), an Analysis of Brownfields Cleanup Alternatives (ABCA) or utilization of Davis Bacon wages and associated regulations because of the size of the loan and/or subgrant (i.e., less than \$100,000).

## **1. Program Goals**

~~(a) To finance the removal of hazardous substances from Brownfields sites within the City of Portland.~~

To support a sustainable revolving loan fund program to finance the assessment and remediation/cleanup of Brownfields 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. It is the intention of the City to continue to revolve (loan) these monies for remediation and cleanup however, Closeout Funds are flexible and can also be used for subgrants and assessment related activities.

~~(b)~~

~~(c) To assist the assessment and remediation/cleanup and redevelopment of Brownfields sites within the City of Portland.~~

## **2. Program Objectives**

- (a) To create an incentive for private investment in Brownfields areas properties in the City of Portland;
- (b) To assess and safely clean up Brownfields properties in order to facilitate their sustainable reuse;
- (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 exacerbation, creation or spread of contamination on or between properties to protect the public health by minimizing exposure to hazardous materials in the environment.

## **~~3. Program Description~~**

~~This program is designed to encourage the environmental assessment and remediation/cleanup of eligible 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. This will be achieved through funding Phase I and II environmental site assessments and remediation/cleanups on public properties owned by~~



~~the City of Portland, and Phase II environmental site assessments and remediation/cleanups through loans to for-profit entities and non-profit organizations for properties owned by such entities.~~

~~All work under this Program is to be completed in accordance with the requirements outlined in the Closeout Agreements between the EPA and the City.~~

#### ~~4. Program Funding~~

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

#### **53. Eligible Project Applicants/Entities and**

- (a) The project applicant or owner is not considered potentially responsible for the contamination on the property ;
- (b) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
- (c) The project applicant or owner is not in environmental non-compliance with Federal or State agencies at the subject property;
- (d) The project applicant can be the City of Portland, non-profit or private property owner or prospective commercial property owner, bank, developer, etc.;
- (e) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;

#### **4. Property Threshold Requirements:**

- (a) The property ~~to be assisted~~ is located within the City of Portland.
  - (a) The property must be eligible to apply to the Maine Voluntary Response Action Program (VRAP) for site cleanup;
  - (b) For cleanup, the property must have had adequate and recent (within the last 2-3 years) environmental assessments completed in order to understand site conditions and necessary remediation (e.g., Phase I and/or Phase II Environmental Site Assessments and Cleanup Planning, if applicable);
  - (c) The property meets EPA eligibility requirements;
  - ~~(b) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;~~
  - ~~(e) The project applicant or owner is not considered potentially responsible for the contamination on the property ;~~
  - ~~(d) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;~~
  - ~~(d) The project applicant or owner is not in environmental non-compliance with Federal or State agencies at the subject property.~~
  - ~~(e)~~

- ~~(f) The project applicant can be the City of Portland, not for profit or private property owner or prospective commercial property owner, bank, developer, etc.~~
- ~~(g) (h) Funds can be used for Phase I and Phase II environmental site assessments and remediation/cleanups on public properties owned by the City of Portland, and for Phase II environmental site assessments and remediation/cleanups on non-profit and privately owned properties.~~

## 5. Ownership Eligibility for Cleanup Subgrants and Loans

- (a) Publicly or privately owned by current or prospective property owners, banks, developers, etc.;
- (b) Privately-owned by current or prospective non-profit owners to seek loan and/or subgrant;
- (c) Applicant must own or be in the process of obtaining ownership at the time of application
- (d) Applicant cannot be potentially liable under CERCA Sec. 107 for contamination on the property.

## **56. Eligible Activities**

Assessment activities and remediation/cleanup activities 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 Department of Environmental Protection (MDEP) VRAP application and associated application fee;
- ~~(a)~~(b) Installation of fences, warning signs or other security or site control precautions;
- ~~(b)~~(c) Drainage controls associated with assessment and remediation/cleanup activities;
- ~~(e)~~(d) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;
- ~~(d)~~(e) Capping of contaminated soils;
- ~~(e)~~(f) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- ~~(f)~~(g) Excavation, consolidation, or removal of contaminated soils from the site;
- ~~(g)~~(h) Abatement of hazardous building materials including asbestos, lead paint, mold and PCBs;
- ~~(h)~~(i) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
- ~~(i)~~(j) Consolidation, containment, treatment, recycling, disposal, and/or incineration of hazardous materials, pollutants or contaminants;
- ~~(j)~~(k) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;

- ~~(k)~~(l) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup;
- (m) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements;
- ~~(n)~~(n) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup;
- ~~(m)~~(o) Phase I Environmental site assessments performed in accordance with EPA All Appropriate Inquiries Final Rule or most current version of ASTM E1527;
- ~~(n)~~(p) Phase II Environmental site assessments and remediation planning activities;
- ~~(o)~~(q) Programmatic costs for the City of Portland and its Qualified Environmental Professional (QEP) to manage and oversee the work being performed under this Program.

## **67. Ineligible Activities**

Brownfields inventory activities and ~~D~~development activities that are not necessary to implement assessment or remediation activities (e.g., construction of a new facility or marketing of a property).

## **78. Financing Terms**

The following terms will guide the actions of the Portland Development Corporation (PDC) on behalf of the City of Portland for cleanup/remediation loans and subgrants:

- (a) Loan and/or subgrant amount will generally be limited to ~~the balance of the loan fund but generally less than not exceed \$1200,000~~ but may be increased with approval of the PDC;
- (b) Maximum loan term will generally be 5 years but will be determined by the PDC;
- (c) Interest rate will be determined by the PD-C;
- (d) Brownfields site itself, business assets or other real property, outside collateral, and/or personal guaranties may be required as security;
- ~~(e) Origination fee will generally be one percent (1%) but will be determined by the PDC~~

## **98. Requests for Amendment to Loan Terms:**

A one (1) percent fee ~~will~~ may be applied to requests for amendments to loan terms, for consulting, legal and recording fees associated with preparing any additional loan documents/modifications. The one (1) percent fee will be based on the current loan balance at the time of the request.

The City's Economic Development Director (PDC Assistant Secretary) has the discretion to determine whether requested loan amendments should be brought to the PDC or addressed administratively, with follow-up communication to the Board.

#### **10. Underwriting Criteria for Cleanup Loans and Subgrants**

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

- (a) Necessity of loan and/or subgrant to make the project economically feasible with the least amount of public resources.
- (b) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the City contracted underwriter to assess that applicant is not a business risk.

~~Project review will include, but not be limited to the necessity of Brownfields funds from this Program to make the project economically feasible and at the same time have a high potential for economic success.~~

#### **119. Overall Review Criteria**

The application for City of Portland Brownfields funding will be evaluated using some or all of the following criteria:

- a) Cleanup activities are eligible
- b) Completeness of application
- c) Sufficient Brownfields funds available
- d) Economic/Financial benefits
  - 1. Potential for redevelopment;
  - 2. Developer interest in site;
  - 3. Potential for job creation, workforce/affordable housing and/or sustainable economic development;
  - 4. Financial feasibility for cleanup/remediation of contamination
  - 5. Ability to leverage additional funding or other resources for cleanup/remediation.
- e) Environmental benefits
  - 1. Potential reduction, elimination and/or control of threats/risks to human health and the environment;
  - 2. Creation, preservation and/or maintenance of greenspace.
- f) Community benefits
  - 1. Likelihood for successful redevelopment, reuse and/or revitalization
  - 2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
  - 3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;

4. Interest and presence of a willing owner, buyer or other stakeholder to invest in the property and to provide access to the property for investigation.

## **12. Application Review Criteria Process**

~~The City of Portland's Economic Development Department (EDD) will review project proposals to determine eligibility and work with applicant(s) to determine the viability of the project and the least amount of public resources necessary to make the project(s) feasible.~~

An eligibility form will be submitted to EPA for determination of project eligibility whether for assessment or remediation/cleanup. The site eligibility form will be prepared by the Applicant's QEP.

### **A) Assessments and/or Cleanup Planning**

Closeout Funds will only be used to fund assessment activities if/when all funds from the Assessment Program have been depleted. At that point, any assessment funding requests will be submitted to the PDC as it will retain its full authority over the Closeout Funds.

Requests will be submitted via an Assessment Application to the EDD. Funding requests for assessment activities, including Phase I and Phase II Environmental Site Assessments, will be reviewed and approved by the PDC Board.

### **B) Loans/Subgrants**

**Remediation/cleanup plans** should be implemented efficiently, cost effectively, and redevelopment projects completed on schedule ~~to maximize the community benefit goals of the projects~~. The actions to be taken, including review by the PDC, are as include the following:

- (a) Applicants seeking funds for remediation/cleanup are required to be enrolled ~~submit the site to~~ in the Maine Voluntary Response Action Program (VRAP);
- (b) Applicant will complete the City's ~~The~~ Brownfields RLF funding Part 1 ~~Application and will be submit provide ted it~~ to the ~~City of Portland~~ EDD, along with Environmental Site Assessments I and II, and evidence of VRAP submittal to the Maine ~~Department of Environmental Protection (MDEP);~~
- ~~(b)~~(c) Applicant or QEP will prepare EPA Site Eligibility form; EDD submits to EPA for final eligibility approval;
- ~~(c)~~(d) The EDD, with its ~~The~~ City's QEP, will review the ESA's and cleanup plan summary in addition to the Part 1 RLF application. If determine if the Applicant's site cleanup activities and preliminary project costs are eligible, the City's QEP will prepare a summary memo to the EDD, site and preliminary project costs are eligible for Brownfields funding;

- ~~(d)~~(e) ~~If Applicant, site and project costs are determined to be eligible,~~  
Applicant submits Part II application (financial backup). The EDD will have  
~~its~~ underwriter prepares an analysis of the financial components of the application  
(whether for loan or subgrant) along with recommended terms and conditions for  
the PDC's review and consideration approval;
- ~~(e) Project will be publicly noticed and notice will be provided to the appropriate  
neighborhood organization;~~
- (f) When so advised by City Corporation Counsel, the PDC chair will accept public  
comment on the project at the PDC meeting prior to its vote on whether to  
approve the funding request;
- (g) Based on a favorable analysis of the financial qualifications of the applicant, and  
the PDC's approval, a commitment letter or will be prepared and provided to the  
applicant;
- (h) Based on the VRAP, the Applicant should prepare a detailed cleanup budget and  
work schedule final budget of cleanup activities, work schedule, a Health and  
Safety Plan and a Site Specific Quality Assurance Project Plan (SSQAPP), if  
needed. The SSQAPP must be reviewed by Maine DEP and EPA, prior to  
finalization; and a VRAP Work Plan;
- (i) The loan documents are prepared (e.g., loan agreement, promissory note,  
mortgage agreement).

### City Checklist for Applicants

The following is a checklist of information needed from Applicants:

#### 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 Related Conditions

- a. Environmental assessments (Phase I and II) in accordance with American Society for Testing and Materials (ASTM) Standards;
- b. Status of the borrower as a potentially responsible party at the site;
- c. Environmental compliance history;
- d. Whether the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
- e. Whether the Applicant is a generator or transporter of contamination at the site; and
- f. Whether 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 CERCLA if the Applicant is currently the

owner/operator of the site.

Remediation/Cleanup Plan

Remediation/Cleanup Plan Summary: Remediation/Cleanup plan including a technical description of work to be done and costs estimates.

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

- a. 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;
- b. Investment Impact: Serves as an incentive for investment in the City;
- c. Multi-Family Housing: Housing Units: Available for the creation of multi-family housing housing units located in on brownfields properties; the City;
- ~~e.~~d. Public open space and recreation acreage for cleanup on brownfields property;
- ~~d.~~e. Any other community benefits.