



# **PALM BEACH COUNTY FLORIDA**

## **BROWNFIELDS REVOLVING LOAN FUND for CLEANUP of CONTAMINATED SITES PROGRAM GUIDELINES**

**(As approved by the PBC BCC on April 15, 2014)**

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## **Brownfields Revolving Loan and Subgrant Fund For Cleanup of Contaminated Sites Program Guidelines**

The Palm Beach County Brownfields Revolving Loan Fund (BRLF) administered by the Department of Economic Sustainability (DES) offers financial assistance to qualifying borrowers (private or public entities) and subgrantees (non-profit organizations, political subdivisions, etc.) to cleanup properties that have been designated brownfields, creating opportunities for employment and revitalizing the community. DES will advertise and market the BRLF through various media to business/property owners, lenders, government agencies, downtown redevelopment authorities, economic development organizations, Business Development Board of PBC and Chambers of Commerce.

This revolving loan fund and subgrant is funded through the U.S. Department of Environmental Protection Agency (EPA), to serve the needs of public and private entities whose properties are complicated by the presence or potential presence of environmental contaminants. The BRLF program acknowledges that “gaps” exist in traditional lending markets for funding for brownfields cleanup activities. This program will provide assistance to those property owners who need that assistance. The loans and subgrants will help to fund the remediation required for site cleanup, which will then allow redevelopment projects and job creation to move forward.

### **Program Goals and Objectives**

1. Identify viable eligible project sites requiring cleanup activities and redevelopment.
2. Establish an expedited, equitable coordinated and easy to use process available to developers.
3. Encourage a *comprehensive cleanup and redevelopment financing package* to accelerate the overall project completion.
4. Influence market conditions to attract private development to Brownfield Areas.
5. Lend monies at low interest and favorable terms to encourage sustainable uses while providing recapitalization and growth of the revolving loan fund.

### **Authorization**

The BRLF will follow U.S. EPA regulations and locally-established criteria for eligibility and underwriting criteria, and procedures. The County will not seek a waiver or exception to EPA regulations or guidelines. The Board of County Commissioners (BCC) is the only authority that can waive or approve an exception to BRLF criteria when such criteria are not based on EPA regulations or guidelines.

### **Location of Brownfields Sites**

Projects eligible for BRLF funds must be located within the boundaries of Palm Beach County. However, a special focus will be given to the Glades Region, transportation oriented development, community redevelopment and enterprise zone areas, and designated brownfield areas.

### **Eligible Sites**

Sites eligible for cleanup activities with brownfield funding must be all or part of an approved designated Brownfield with proposed cleanup activities that can be completed with available funds defined by the loan or subgrant. Loan or subgrant funds are eligible for use on property that has an actual release or substantial threat of release of a hazardous substance to the environment. Funds may also be used to address releases or substantial threats of release of a pollutant or contaminant that may present an imminent or substantial danger to public health or welfare. The following sites may be funded:

- Publicly owned, either directly by a municipality or indirectly through a quasi-public entity, such as a community redevelopment organization; and
- Privately owned and with clear means of recouping BRLF expenditures through an agreement with the owner or developer, or through a lien or other security interests; to include properties undergoing purchase by an entity who meets the definition of a Bona Fide Prospective Purchaser (BFPP); or
- Enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

### **Ineligible Properties**

- Property listed or proposed for listing on the National Priorities List (NPL)
- Facility out of compliance with an unilateral administrative order and subject to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 107 court orders or judicial consent decrees
- Federal properties (except land held in trust for an Indian tribe)
- Superfund Sites

### **Eligibility Criteria for Applicants (Borrower/Subgrantee)**

Eligible borrowers can be any public or private entity with control over or access to a brownfields site. Borrowers must be able to incur debt and carry out the purposes of the loan.

To be eligible to receive loans from the BRLF, the applicants must be:

1. Citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence. In the case of an organization, at least 51% of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.
2. Applicant/Borrower must, along with its principal officers (including their immediate family) hold no legal or financial interest or influence with Palm Beach County. Also, Palm Beach County must hold no legal or financial interest or

influence in the borrower. However, this paragraph shall not prevent Palm Beach County from making a loan to one of its members.

3. Any delinquent debt, foreclosures or bankruptcies to the federal government, banks, individuals, by the Applicant/Borrower or any of its principals, shall cause the proposed borrower to be ineligible to receive a loan through the Brownfields Program. Loans from this program may not be used to satisfy the delinquency.

#### **Applicant (Borrower/Subgrantee) Eligibility Restrictions**

1. Borrower/Subgrantee cannot be a potentially liable party under CERCLA § 107 for cleanup costs at the site
2. Currently suspended, debarred from receiving federal funding, or otherwise declared ineligible
3. The borrower or subgrantee may be any public or private entity with control over or access to a brownfields site
4. The subgrantee must retain ownership (fee simple title) of the site throughout the period of the subgrant
5. Borrowers who are eligible or seeking to become eligible to receive a loan based on liability protection from CERCLA in one of the three categories below must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible borrower:
  - Bona Fide Prospective Purchaser (BFPP)
  - Contiguous Property Owner (CPO), or
  - Third Party or Innocent Land Owner (ILO)

#### **Applicant (Borrower/Subgrantee) Responsibilities**

1. Must comply with eligible funding uses
2. Submit information regarding their overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan/subgrant
3. Participate in the development and execution of the environmental cleanup
4. Document all fund uses and provide financial records on a regular basis as required by the program
5. Contractually responsible to the PBC DES
6. Comply with all applicable federal, state and local laws
7. The borrower or subgrantee must certify to a good faith effort to comply with any penalties resulting from environmental noncompliance actions at the site

#### **Eligible Uses of Loans and Subgrants**

BRLF funds may be used for the following actions and activities, but are not limited to:

- Removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, contaminant, petroleum product, or controlled substance into the environment;
- Oversight of cleanup activities;

- Installation of fences, warning signs, or other security or site control precautions;
- Installation of drainage controls;
- Stabilization of berms, dikes, or impoundments; or drainage or closing of lagoons;
- Capping of contaminated soils;
- Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- Excavation, consolidation, or removal of contaminated soils from drainage or other areas;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants, including petroleum;
- Removal of source materials, including free product recovery;
- Containment, treatment, disposal or incineration of hazardous materials and petroleum products;
- Site monitoring activities, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup; and
- Sampling related to design and implementation of a selected cleanup plan;
- Costs associated with documenting the Analysis of Brownfield Cleanup Alternatives (ABCA); and
- Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

### **Ineligible Uses**

BRLF funds cannot be used for the following activities, but is not limited to:

- Pre-cleanup environmental activities (e.g. site assessment, identification, and characterization with the exception of site monitoring activities);
- All indirect costs unless contract is for a programmatic activity;
- Sampling activities related to analyzing cleanup alternatives;
- Addressing public or private drinking water supplies that have deteriorated through ordinary use;
- A cleanup or other response cost at a brownfields site for which the entity is potentially liable under CERCLA;
- 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;
- Construction, demolition, and development activities that are not cleanup actions (e.g. marketing of the property or construction of a new facility);
- Cost sharing or matching requirement for another federal grant; and
- Any other activity determined to be ineligible by the County, acting in its sole authority.

### **Cross-Cutting Requirements**

Attachment A contains a list of Federal laws and authorities subcategorized as economic and social authorities that may apply to projects or activities receiving assistance through this loan/subgrant program. The BRLF in conjunction with Region IV Office of EPA will provide additional guidance on applicability of specific cross-cutting requirements on a case-by-case basis. Those cross-cutting requirements deemed applicable to a specific project will be included as loan and subgrant conditions.

### **Maximum Amount of Loan and Leverage Requirements**

- The actual BRLF loan amount will be determined on an individual basis. DES staff will recommend a maximum loan amount based on analysis of the loan application and cost of cleanup activities. Factors to be considered may include but not limited to: financial feasibility; ability to repay; collateral; nature of the project; project scale; and public benefit.
- A comprehensive cleanup and reuse/redevelopment project financing may include BRLF, Section 108 Loan, private banks, SBA, USDA or other institutional funds or industrial revenue bonds. Total project financing will require 10% equity from borrower in cash or property value. If BRLF is the only loan participating in financing the project, then borrower equity must be at least 20%.
- Subgrantees are required to provide eligible funds, labor, services or materials in an amount of not less than 20% of the value of the subgrant amount or supported by the developer's 20%.

### **Rates**

The Palm Beach County rate shall be 300 basis points (3.00%).

### **Loan Review Committee (LRC) Approval**

After determining that the project and the applicant qualify for a BRLF loan and/or subgrant and the Borrower has a firm Letter of Commitment from the other participating lenders for the project, the DES and the County's Consultant will prepare a Financing Package for the LRC with all of the supportive documentation. The LRC shall approve or disapprove the loan and/or subgrant application.

### **Fees/Costs: Non-refundable Fee(s) and Borrower Shall Assume All Closing**

#### **Costs:**

- A non-refundable application fee at time of approval shall be 0.500% of total loan request or a minimum of \$500, whichever is greater.
- An origination and administrative fee of 3% of the loan payable at closing and eligible to be included in the principal balance.

- The applicant will be responsible for all other fees, including bank/SBA/independent institutional lender fees, inspection fees, appraisal and environmental fees, legal fees from outside firms and the Palm Beach County Attorney's Office, and any other fee. Applicants will receive a Good Faith Estimate of the projected Palm Beach County fees, which may or may not be adjusted at closing.

### **Payments**

Repayment terms for loans may be structured for repayment from 5 to 15 years based on standard underwriting practices. The principal and interest payments will start upon disbursement of funds, unless the County determines that delay in initial repayment is appropriate. There is no prepayment penalty.

### **Underwriting**

In considering an application for a loan, DES will perform a detailed underwriting that will include, but not be limited to, a review and analysis of:

- Business history and redevelopment project concept including job creation
- Business structure, management and staffing
- Historical and projected financial statements
- Credit history
- Collateral evaluation

### **Collateral**

Palm Beach County will collateralize all loans to provide maximum protection of its financial interest. The County will be the first (1<sup>st</sup>) lien holder, if County is the only lender. Collateral for such loans may include, but is not limited to any realty, personal property, or other tangible assets capable of being mortgaged, pledged, or otherwise encumbered by borrower in favor of Palm Beach County. The County shall be the sole arbiter in determination of collateral value. In some instances where other lenders are involved, the County may take a subordinated position but is under no obligation to do so.

### **Other Program Information**

All BRLF funded projects are required to comply with federal, state and local statutes, regulations and requirements, including but not limited to Davis Bacon Wages, Buy America Act, Workers Compensation, insurance requirements, Handicapped Access Regulations and the Uniform Relocation and Acquisition Policies Act. The funded project must meet all federal requirements for work funded by EPA BRLF grants.

Attachment A: Cross-cutting Requirements



## **ATTACHMENT A: CROSS-CUTTING REQUIREMENTS**

The following may be applicable depending upon the loan and/or sub-grant agreement:

### Economic and Miscellaneous Authorities

Debarment and Suspension, Executive Order 12549

Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754, as amended, Executive Order 12372

Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contract, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended

Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222)

### Social Policy Authorities

Age Discrimination Act of 1975, Public Law 94-135

Anti-Lobbying Provision (40 C.F.R. Part 30)

Title VI of the Civil Rights Act of 1964, Public Law 88-0352

Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333) and the Anti-Kickback Acts, as amended (40 U.S.C. 276 c), (18 U.S.C. 874)

Section 13 of the Federal Water Pollution Control Act Amendment of 1972, Public Law 92-500 (the Clean Water Act)

The Drug-Free Workplace Act of 1988, Public Law 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (including Executive Orders 11914 and 11250)

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590

Women's and Minority Business Enterprise, Executive Orders 11625, 12138, and 12432