



BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM GUIDELINES

Planning and Growth Management Department
601 East Kennedy Boulevard, Floor 20
Tampa, Florida 33602

Contact: Charner Reese
Tel: (813) 272-5828
reesec@hillsboroughcounty.org

Fax: (813) 272-6068
Website: www.hillsboroughcounty.org

AUGUST 10, 2004 EPA-APPROVED DOCUMENT

Revised October 21, 2005 to amend Section 4.3 to reduce from 10 to 3 years the timeline for records retention and provide that lender assures transmittal of written approval to EPA prior to records destruction. Revised June 29, 2007 to streamline information to be included in a funding application.

TABLE OF CONTENTS

	Page
PURPOSE AND SCOPE	2
SUMMARY	3
SECTION I: MINIMUM ELIGIBILITY REQUIREMENTS	3
1.1 Eligible Borrowers and Recipients	3
1.2 Eligible Uses of Loans and Sub-Grants	4
1.3 Eligible Sites	4
1.4 Cross-Cutting Requirements	6
SECTION 2: APPLICATION PACKET	6
2.1 Required Data	6
2.2 Ranking	7
SECTION 3 CLOSING LOANS AND SUB-GRANTS	8
3.1 Preparation for Closing	8
3.2 Closing Costs	8
3.3 Remediation Plan	9
SECTION 4: SERVICING OF LOANS AND SUB-GRANTS	9
4.1 Payment Procedures	9
4.2 Status Reports	9
4.3 Record Keeping	10
4.4 Loan and/or Sub-Grant Terms	10
4.5 Loan Delinquencies	10
ATTACHMENTS	11
Attachment A: Cross-Cutting Requirements	11

PURPOSE AND SCOPE

The purpose of the Hillsborough County, Florida Brownfields Cleanup Revolving Loan Fund (BCRLF) is to facilitate the reuse and/or redevelopment of contaminated sites by making low cost funding available for financing eligible environmental cleanup projects within the County. It is the policy of the Hillsborough County Board of County Commissioners (BOCC) to provide assistance and incentives to public and private land owners and businesses to facilitate the owner's environmental cleanup and reuse of contaminated urban property as part of the County's redevelopment and growth management strategy.

Brownfields are abandoned, idled, or under-utilized industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination from such materials as pesticides, metals, paints, chemicals, and other commercial and industrial waste. A major barrier to redeveloping Brownfields in the County is the fact that contaminated properties have marginal economic feasibility after considering remediation costs. In the real estate market, properties are often avoided because of concerns about liability and cleanup costs. One obstacle to brownfields redevelopment in the County is a lack of funding for brownfields cleanup. A premise of the BCRLF program is that "gaps" exist in traditional lending markets for funding for brownfields cleanup activities. This program provides assistance to those property owners who need that assistance. The intent is to use BCRLF monies to make loans and sub-grants in designated Brownfield Areas to appropriate property owners. The loans and sub-grants will help to fund the remediation required for site cleanup, which will then allow redevelopment projects to go forward. The net result will be that the BCRLF will help to advance the program goals listed below.

The Hillsborough County Board of County Commissioners (BOCC) under auspice of the County Administrator will function as the "grant administrator" and the "fund manager." A Memorandum of Agreement shall implement BOCC designation of "site managerial" functions to the Environmental Protection Commission of Hillsborough County (EPC).

The BCRLF program brings together local, state, and federal agencies with private sector, non-profit and community organizations to improve the quality of life for residents of Hillsborough County. Because actual or perceived environmental contamination in urban infill sites, along with the risks and costs associated with addressing the contamination, presents a significant barrier to redevelopment in the County, the BOCC has chosen to target designated Brownfield Areas as part of a larger Brownfields effort and the County's Brownfields Community Redevelopment Program. The BCRLF initiative seeks to revitalize and improve the quality of life in the County in an effort to lessen development pressure and urban sprawl. Program goals are listed below:

1. Protect the region's present and potential future drinking water supplies by minimizing contamination.
2. Establish an expedited, equitable, coordinated, and easy-to-use process available to developers who may be interested in a particular Brownfield Area.

3. Influence market conditions to attract private development to Brownfield Areas in areas selected for public policy reasons, such as the creation of additional jobs, affordable housing, green space, and small business initiatives.
4. Enhance and reinforce ecosystem environmental restoration, public health, economic development, and transit-related efforts.
5. Further local, state, national, and global strategies to promote sustainable communities, reduce greenhouse gas emissions, and foster leadership in sustainable development.

SUMMARY

The financing strategy is to make loans and sub-grants in Brownfield Areas to appropriate property owners. The loans and sub-grants will help to fund all or part of the remediation tasks required for site cleanup defined through an approved Brownfields Rehabilitation Agreement, which will then allow redevelopment projects to go forward. The source of financing is the United States Environmental Protection Agency (EPA), through the provision of direct loans, usually at below market interest rates, and sub-grants. The impact of the BCRLF will be based on demand and performance. Preference will be given to applications requesting the full amount of a loan as well as a sub-grant.

BCRLF program guidelines will serve as general parameters, but permit flexibility to best serve individual applicants. The basis of loan and sub-grant decisions will be similar to that of traditional lenders: character, capacity, capital, condition, and collateral. For example, character assessments and management capacity will be important in some cases; many small business owners will be inseparable and indistinguishable from their business. Each loan and sub-grant will be considered individually and allowances may be made based on circumstances and security conditions.

SECTION 1: MINIMUM ELIGIBILITY REQUIREMENTS

1.1 Eligible Borrowers and Recipients

In order to be eligible for a loan or a sub-grant under the BCRLF program, a potential borrower or recipient must meet the following qualifications:

- A. The borrowing or receiving entity may not be one which has defaulted or is owned in whole or in part by any individual or entity that has defaulted on any loan made with federal funding or under any program administered by the County or State.
- B. The borrower or recipient must certify to a good faith effort to comply with any penalties resulting from environmental non-compliance actions at the site.
- C. The borrower or recipient cannot have been suspended, debarred, or otherwise declared ineligible to operate a business or as a practicing member of an accredited professional organization.

- D. For the site that the borrower or recipient seeks a loan and/or a sub-grant, EPC can determine that the borrower or recipient, as the owner/operator, would fall under a statutory exemption from liability, or that the EPA could use its enforcement discretion and not pursue the party under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- E. The recipient of a sub-grant is a property owner other than the recipient of the grant and can be a non-profit organization.

1.2 Eligible Uses of Loans and Sub-grants

The BCRLF pilot program is funded as a demonstration project through a grant from EPA's Brownfields Program. The funds used in this program have been designated by EPA for **cleanup activities** only. Acceptable BCRLF activities include (but may not be limited to) cleanup actions associated with removing, mitigating, or preventing the release or threat of a release of a hazard substance, pollutant, or contaminant, including:

- Fences, warning signs, or other security or site control precautions;
- Drainage controls;
- Stabilization of berms, dikes, or impoundments or drainage or closing 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 highly 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;
- Containment, treatment, disposal, or incineration of hazardous substances;
- Provision of alternative water supply where necessary to immediately reduce exposure to contaminated household water;
- Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; and
- Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

The BCRLF may be used for removal activities, including demolition and/or site preparation which are part of site cleanup. BCRLF funds **may not** be used for pre-cleanup environmental response activities, such as site assessment, identification, and characterization. Funds also may be used to purchase environmental insurance.

1.3 Eligible Sites

In order for a site to be eligible, the property must be all or part of an approved designated Brownfield Area with proposed cleanup activities that can be completed with available funds defined by the loan and/or sub-grant.

Cleanup activities funded with loan and/or sub-grant funds are eligible in accordance with an approved Brownfields Site Rehabilitation Agreement (BSRA) between the property owner and the Florida Department of Environmental Protection (FDEP) or designated local environmental agency, EPA Cooperative Agreement BL97487803-0, and EPA Transition Guidelines for BCRLF pilots, EPA-500-F-02-150 document, October 2002.

The BCRLF is limited to use on property that has an actual release or substantial threat of release of a hazardous substance to the environment. The 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. Funds may be used at the following types of sites:

- Publicly owned, either directly by a municipality or indirectly through a quasi-public entity, such as a community development corporation; and
- Privately owned and with clear means of recouping BCRLF expenditures (e.g., 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 prospective purchaser.

BCRLF funds **may not** be used on property or for facilities which are environmentally non-compliant as determined by the issuing party with the following conditions:

- The property is listed, or proposed for listing, on the National Priorities List;
- Property with regulations requiring that a removal action must be taken within six months (i.e., time critical removal action);
- Property that is the subject of a corrective action under orders or agreements issued pursuant to the state or local mandate or the Resource Conservation Recovery Act (RCRA);
- A facility which has or should have a permit or interim status pursuant to County act for the treatment, storage, or disposal of hazardous waste;
- A facility which is out of compliance with a unilateral administrative order, an administrative order, a court order, an administrative order of consent, or judicial consent decree issued or entered into by parties under CERCLA, as determined by the issuing party;
- Property that is out of compliance with an order or authorization issued by or an agreement with the County pursuant to EPC rules and regulations;
- Property that is subject to the provision of the County's Underground Storage Tank Program;

- Facility subject to the jurisdiction, custody, or control of a U. S. government, except for land held in trust by the U. S. for an Indian tribe; and
- Property where a federal or state agency is planning or conducting a response or enforcement action.

1.4 Cross-Cutting Requirements

Attachment A contains a list of Federal laws and authorities sub-categorized as economic and social authorities that may apply to projects or activities receiving assistance through this loan program. It is unlikely that every law or regulation will apply to a particular project under consideration. The BCRLF in conjunction with the Region 4 Office of EPA will provide additional guidance on the 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 sub-grant conditions.

SECTION 2: APPLICATION PACKET

2.1 Required Data

In order to ascertain whether and under what terms and conditions the BCRLF will make a loan or sub-grant, the borrower or recipient must acquire a BCRLF Commitment by submitting an application packet to the County's Brownfields Project Director, consisting of the EPA Region 4 Eligibility Form and such information as the following to demonstrate compliance with the eligibility criteria described in Section I and, if a loan, ability to repay:

1. Affidavit of Eligibility
2. Statement as to whether asking for a loan, a sub-grant, or a combination thereof, amounts requested, and why. Preference will be given to those applications requesting as much as allowable for a loan as well as a sub-grant. Description of how the funds will ensure protection of human health and the environment; how financial assistance will promote economic development; how the project will promote the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposes; and the impact on job creation and retention, including the level of training necessary for employment.
3. Copy of resolution passed by the local government governing body designating the property as a Brownfield Area.
4. Written description of the borrower's or recipient's proposed project, the sources and uses of funds, estimated collateral values if appraisals are not yet available, and the impact on job creation and retention, including the level of training necessary for such employment. Evaluations/appraisals will be necessary prior to closing. Cleanup land values sufficient to cover loan repayment are defined as greater than 150 percent of the land value determined by a recent appraisal and shall be posted. Environmental

audit and questionnaires shall be provided on real estate collateral. A copy of the Remedial Action Plan approved by FDEP, or a delegated agency, with cleanup to be initiated within a 12-month period, shall be required. List of collateral pledged to secure the proposed loan with a copy of the appraised value or estimated collateral value if an appraisal is not yet available, and an affidavit as to any existing liens on the collateral pledged. If pledged, cleanup values pledged shall be sufficient to cover the loan repayment with “sufficient” defined as greater than 150 percent of the land value determined by a recent appraisal. Itemization by amounts and source of other financing associated with the project.

5. Copies of last three (3) years’ of the borrower’s and recipient’s financial audit statements and tax returns including income statements, balance sheets, and cash flow statements. The most current year statement shall not be over sixty (60) days old. If a local government, provide a copy of the annual budget with sufficient detail to demonstrate that the loan can be repaid. For any owner or officer with a twenty (20) percent or more ownership interest in a business, personal financial statements shall be no more than sixty (60) days old from all individuals with an ownership interest of twenty percent (20%) or greater and copies of their last filed federal income tax returns. Financial projections shall be provided for two (2) years, including a balance sheet, income statement, and cash flow statement for each year.
6. Project plan showing the cleanup area and a demonstrated relationship to a redevelopment plan for the property with a copy of the engineering evaluation and cost analysis including a schedule for the cleanup action and estimated project costs relative to assessment and redevelopment costs for the entire Brownfield Area with financial projections for two years including a balance sheet, income statement, and cash flow showing proposed funding and current status of environmental assessment(s) on the property to be cleaned up.
7. Business plan including an operating pro forma of three (3) or more full years with the first year on a monthly basis, second year on a quarterly basis, with revenues and expenses detailed. History and description of the business describing the formation of the business and the products and services provided, with a statement of personal history of the owner and each officer in the business, existing personal and business debts of the property owner with a personal credit bureau report including a list of trade and bank references. Resume of owner(s) and key management personnel. Proof of compliance with permit and license requirements. Copy of articles of incorporation.
8. Copy of flood, hazard or environmental insurance with a statement of commitment that the BCRLF will be made the loss payee
9. Affirmative Action Statement

2.2 Ranking

A loan and sub-grant committee comprised of County staff and staff from the Environmental Protection Commission of Hillsborough County will review applications

and make recommendations to the Brownfields Project Director. After the committee's review, the recommendations will be forwarded to EPA for review and approval and then to the BOCC for consideration. If the BOCC approves the loan or sub-grant, a commitment will be issued; and loan documents and sub-grant agreements will be prepared and approved by EPA and the BOCC.

Ranking criteria shall consist of up to one point being awarded for each of the following criteria:

1. Date of submittal to the County's Brownfields Project Director within a defined timeline for application and each application evaluated against each other
2. Size of the loan, sub-grant, or combination and amounts thereof; interest rate to be paid on the loan, length of loan, and payoff dates
3. Creditworthiness
4. Collateral and ability to pay
5. Managerial expertise
6. Return on County's investment to include the number of jobs created in excess of the County median wage
7. Adequate plan for environmental cleanup
8. Project feasibility
9. Usage of grant money to leverage other financing

SECTION 3: CLOSING LOANS AND SUB-GRANTS

3.1 Preparation for Closing

County staff will prepare closing documents. Draft documents will be available at least ten (10) working days prior to closing. All conditions cited in the Commitment must be satisfied prior to closing. If staff determines an environmental review is necessary, closing will be delayed until the completed assessment can be delivered, reviewed, and approved by the EPC. Tax certificates shall be due at the time of closing.

3.2 Closing Costs

In order to prevent delays in closing, the borrower or recipient should be aware that she/he is responsible for closing costs, some of which may be eligible for reimbursement under the loan or sub-grant, such as environmental insurance.

3.3 Remediation Plan

The borrower or recipient will be responsible for submission to the County of an approved Remedial Action Plan.

All projects undertaken with BCRLF funding will be required to occur on a previously approved County/State designated Brownfield Area. This requirement will be included in loan and sub-grant agreements. This is for the following reasons:

1. This will allow the project to have access to all of the State of Florida incentives for brownfields cleanup and redevelopment, which will assist in leveraging non-EPA funds.
2. This will require involvement of the County's environmental agency to ensure coordination on cleanup activities and involvement of the applicable County. The cleanup will be conducted in accordance with Chapter 62-785, F. S., Florida Administrative Code, Brownfields Cleanup Criteria Rule.
3. The designation and redevelopment or reuse of a brownfield area requires the involvement of community residents and community partnerships; this will assist in meeting environmental justice and public outreach requirements. These requirements generally overlap with the public outreach requirements under the BCRLF program.
4. This will ensure FDEP's and EPC's oversight or assistance in accordance with the Florida Brownfields Redevelopment Act, CERCLA, National Contingency Plan (NCP) and with the terms of the Superfund Memorandum of Agreement between EPA and Florida (dated 12/2/99), as applicable solely to the extent that they are relevant and appropriate to the program.
5. This will allow lender liability to the County, as lender, under the requirement of the Florida Brownfields Program.

SECTION 4: SERVICING OF LOANS AND SUB-GRANTS

4.1 Payment Procedures

Loan payments shall be made directly to the BCRLF. Loan payment shall be due upon sale of the property (or, issuance of a letter stating that no further action is required for environmental cleanup) and shall be paid to the BOCC as processed by County staff.

4.2 Status Reports

The specific borrower's or recipient's reporting requirements/frequency will be determined at the time of closing. It is anticipated that they may include:

1. Reports (possibly as often as quarterly) on the cleanup that document that they are in compliance with all relevant local, Federal and State environmental regulations and that they meet the requirements of the BCRLF. This will include those laws listed in Exhibit A including demonstrated compliance seeking minority- and

women-owned businesses when choosing contractors and payment of wages in compliance with the federal Davis-Bacon Act.

2. Financial statements (possibly as often as quarterly) including basic accounting and control mechanisms to track legitimate use of funds and document that the funds are put to authorized uses. The borrower's or recipient's accounting system must track site-specific cost, and track cost by activity and operable unit if applicable. Financial statements are considered to be: (i) income statements, (ii) balance sheets, and (iii) cash flow statements.
3. Additional reports as necessary.

4.3 Record Keeping

The borrower or recipient must keep records of compliance with the terms and conditions of the loan and agree to maintain records for three (3) years after submission of the financial status report, closeout of the cooperative agreement, completion of an ongoing audit, or the length of the loan funded with the grant, whichever is the longest retention period. It is the responsibility of the lender to assure that written approval is sent to EPA prior to destroying any records.

4.4 Loan and/or Sub-Grant Terms

The County wants a lump-sum payment for the loan and any proposed interest.

1. Interest rates will be determined by the applicant.
2. There is no minimum size loan or sub-grant. The maximum size is limited by the EPA/BOCC Cooperative Agreement and funds availability.
3. There are no prepayment penalties on loans.

4.5 Loan Delinquencies

Collections procedures for delinquent loans will be addressed in accordance with penalties stipulated in the agreement to repay the loan. The County will consider the borrower to be in default pursuant to serving notice to the borrower after sixty (60) days of delinquency.

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