



Niagara County, New York Brownfields Cleanup Revolving Loan Fund Guide



August 2020

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GUIDE INDEX

Assistance for Brownfield Sites	1
Site Eligibility	1
Eligible Borrowers.....	2
What Can Loan Funds Pay For?.....	2
Costs Not Allowed with Loan Funds	3
State and Federal Regulations	4
Loan Application Process	4
Loan Terms and Conditions.....	6
Community Involvement.....	6
Contact Information.....	6
Brownfields Property Approval Form.....	A-1
Application for Brownfields Financial Assistance.....	B-1

ASSISTANCE FOR BROWNFIELD SITES

Do you own property that needs to be cleaned up? If yes, we can help!

The Niagara County Brownfield Development Corporation (NCBDC) manages a Brownfields Loan Fund that offers low cost loans to assist with the cleanup costs at brownfield sites in Niagara County, New York. **Each loan is customized to provide the greatest flexibility to the borrower.**

Brownfields can exist at a variety of sites including:

- Former industrial facilities
- Abandoned commercial properties
- Closed schools
- Junk yards and auto repair shops
- Other sites with contamination

The loan fund is capitalized with funding from the United States Environmental Protection Agency (EPA) and can be a key component of project financing.

SITE ELIGIBILITY

Eligible sites include:

- ✓ Sites contaminated by hazardous substances (ex. metals, PCBs, asbestos, lead-based paint, mold, radiological materials, etc.)
- ✓ Sites at which Phase I and II Environmental Site Assessments have been completed consistent with ASTM standards;
- ✓ Sites approved by EPA Region 2 as meeting federal eligibility requirements; and
- ✓ Sites accepted in the New York State Brownfields Cleanup Program (BCP), unless the project includes only contamination not eligible for the BCP.

Ineligible brownfield sites are:

- ✗ Sites contaminated with exclusively petroleum contamination;
- ✗ Sites listed or proposed for listing on the National Priorities List;
- ✗ Sites subject to a unilateral administrative order, court order, administrative order on consent, or judicial consent decree issued or entered into by parties under CERCLA; or
- ✗ Sites subject to the jurisdiction, custody, or control of the U.S. government.

ELIGIBLE BORROWERS

Eligible borrowers must meet all of the following criteria:

- Borrower is the site owner;
- Borrower acquired property after the time of contamination, has not caused, contributed to, permitted or exacerbated the release of hazardous substances on or emanating from the property and is not potentially liable under Federal CERCLA regulations;
- Borrower must have performed “all appropriate inquiry” before acquiring the property;
- Borrower has not been suspended, debarred or declared ineligible for Federal financial assistance programs;
- Borrower is authorized to incur debt and enter into legally binding agreements; and
- Borrower is financially sound.

WHAT CAN LOAN FUNDS PAY FOR?

Loan funds can only be used for eligible cleanup costs as designated by EPA. Specific eligible costs include:

1. Costs associated with removing, mitigating, or preventing the release or threat of release of a hazardous substance, pollutant, contaminant, or controlled substance into the environment including:
 - a. Fences, warning signs, or other security or site control precautions;
 - b. Drainage control;
 - c. Stabilization of berms, dikes, or impoundments; or drainage/closing lagoons;
 - d. Capping of contaminated soils;
 - e. Using chemicals and other materials to retard the spread of the contaminant release or mitigate its effects;
 - f. Excavation, consolidation or removal of contaminated soils;
 - g. Removal of drums, barrels, tanks or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants; and
 - h. Containment, treatment, disposal or incineration of hazardous materials.
2. Costs associated with removal activities, including asbestos abatement, lead-based paint removal, mold removal, demolition and/or site preparation that are part of site cleanup.
3. Site monitoring costs, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.

4. Costs associated with requirements of the NYS BCP, including community involvement, worker health and safety, and ensuring the cleanup complies with applicable state and federal laws.
5. Professional services required as part of the cleanup.

COSTS NOT ALLOWED WITH LOAN FUNDS

Per EPA, loan funds can **NOT** be used for the following activities:

1. Pre-cleanup environmental assessment activities (i.e. site assessment, identification, or characterization with the exception of site monitoring);
2. Monitoring or data collection necessary to apply for, or comply with environmental permits under other state and federal laws unless such a permit is required as a component of the cleanup action;
3. A cleanup cost at a brownfields site for which the loan recipient is potentially liable under CERCLA §107;
4. Construction, demolition, and development activities that are not cleanup actions (e.g. construction of a new facility or marketing of the property);
5. Payment of a federal cost share requirement (i.e. a cost-share required by another federal grant) unless there is specific federal authorization;
6. Payment of a penalty or fine or as a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for the cleanup;
7. Job training or lobbying efforts in accordance with applicable federal OMB Circulars; and
8. Payment of administrative costs including the following:
 - a. Salaries, benefits, contractual costs, supplies, and other charges incurred for loan administration and overhead costs;
 - b. Direct costs for loan administration, even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administrative costs include expenses for:
 - i. Preparation of applications for loan agreements;
 - ii. Preparing revisions and changes in the budget, work plans, and other documents required under the loan agreement;
 - iii. Maintaining and operating financial management and personnel systems;
 - iv. Preparing payment requests and handling payments; and
 - v. Audits

STATE AND FEDERAL REGULATIONS

All applicants must demonstrate an acceptance of, and willingness to follow, all applicable State and Federal regulations and submit compliance reports regarding the following:

- Payment of federal prevailing wage rates for all construction-related activities financed in whole or in part with federal funds;
- Compliance with MBE/WBE goals established by EPA; and
- Compliance with the Terms and Conditions of the Cooperative Agreement between Niagara County and EPA. A copy of the agreement will be provided.

LOAN APPLICATION PROCESS

Pre-Application

Interested applicants must submit a completed EPA Brownfields Property Approval Form to the NCBDC. A copy of the form is attached as Pages A-1 to A-4. Upon issuance of a site eligibility determination from EPA, the applicant will be notified of eligibility. If eligible, the applicant is asked to complete an Application for Brownfields Financial Assistance (Pages B1 to B7). The Niagara County Community College Small Business Development Center (SBDC) is available to assist potential loan borrowers with preparation of a business plan and financial projections to aid in the review and underwriting process.

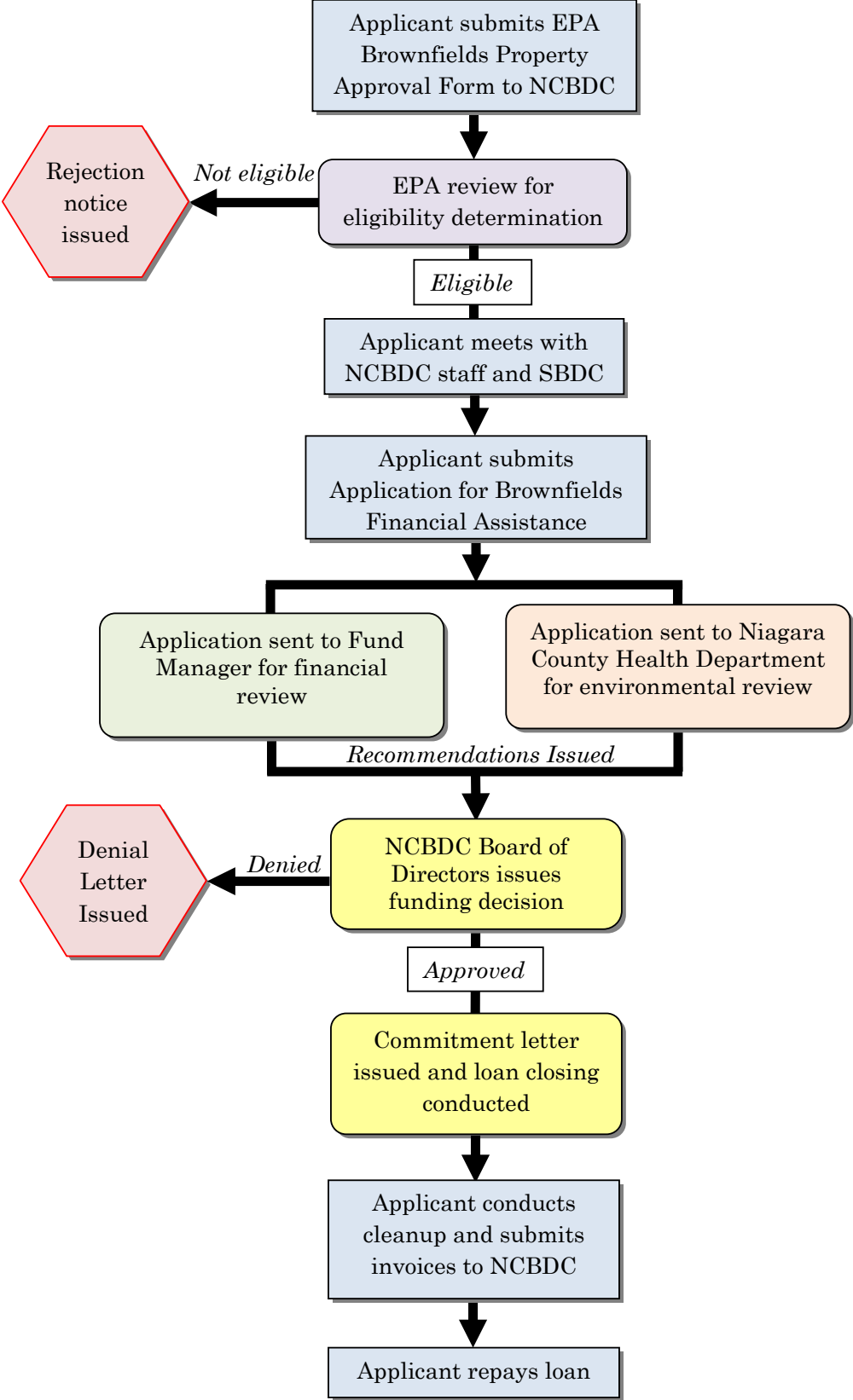
Loan Application

The applicant will submit an Application for Brownfields Financial Assistance to the NCBDC. The Niagara County Health Department (NCHD) will review the environmental assessment reports, discuss the project with the New York State Department of Environmental Conservation, and issue a project recommendation.

An analysis and evaluation of each loan application is made by the NCBDC Fund Manager to determine the level of risk based on the applicant's ability to repay the loan and the value of available security. The analysis and, if appropriate, a recommendation regarding loan terms and conditions are presented to the NCBDC Board of Directors for consideration at a public meeting. Final loan approval rests within the discretion of the NCBDC Board.

If the funding request is declined by the NCBDC Board, the applicant is notified in writing and NCBDC staff will review the project to determine if restructuring and resubmission to the NCBDC Board is appropriate. If the funding request is approved, a commitment letter will be sent to the applicant that includes the amount, rate, terms, and primary conditions for the loan. NCBDC staff will work with the applicant and NCBDC attorney to facilitate loan closing.

Brownfield Loan Fund Process



LOAN TERMS AND CONDITIONS

LOANS ARE VERY FLEXIBLE AND CUSTOMIZED TO HELP YOU!

Terms could include:

- Fixed 0.5% (one-half of one percent) interest rate for the term of the loan
- Loan term of up to ten (10) years
- No principal or interest during year one and interest only payments in year two
- Loan amount of up to 80% of eligible remediation costs
- Loans are based on a reimbursement structure for actual eligible costs incurred
- Easy processing of invoices and payment typically in 30 days

Terms effective 01/01/2020 and are subject to change at the discretion of the NCBDC Board

COMMUNITY INVOLVEMENT

Borrowers who are enrolled in the BCP need to submit a copy of the NYS-required documentation to the NCBDC. No additional community involvement work will be required. For projects not in the BCP, a community involvement plan must be developed and implemented. Costs associated with meeting community involvement requirements are an eligible use of loan funds.

CONTACT INFORMATION

For further information and assistance, please contact Ms. Amy Fisk, AICP, President of the Niagara County Brownfield Development Corporation, at (716) 278-8754 or by e-mail to amy.fisk@niagaracounty.com.

BROWNFIELDS PROPERTY APPROVAL FORM

Submission Date: _____

I - Property Information

Site Name

Address

City

State

Zip Code

Municipality

Current Owner

II - Status and History of Contamination

Type of contamination (mark one) Hazardous Substances Petroleum

If hazardous substances and petroleum please check hazardous substances

Current use of Property

Period of operation

Total years of operation

Describe environmental concerns and nature and extent of contamination.

How did the property become contaminated?

III - Property Eligibility for Funding

Is the property listed or proposed to be listed on the National Priority List?

YES NO

Is the property subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA? YES NO

Is the property subject to the jurisdiction, custody, or control of the U.S. government?

YES NO

IV - Property Ownership Eligibility

CERCLA § 107 Liability

Are you eligible for one of the following CERCLA liability protections or defenses: (1) an innocent landowner; (2) a bona fide prospective purchaser (BFPP), (3) a contiguous property owner; or (4) a local or state government entity that acquired the property involuntarily through bankruptcy, tax delinquency, or abandonment, or by exercising its power of eminent domain.

YES NO

If the answer is YES, please explain why?

Enforcement Actions

Identify known ongoing or anticipated environmental enforcement actions related to the property.

Describe any inquiries or orders from federal, state, or local government entities that your organization is aware of regarding the responsibility of any party (including your organization) for the contamination at the property.

Information on the Property Acquisition

How you acquired or will acquire ownership (e.g., by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe)).

Indicate the date you acquired or will acquire the property.

The name and identity of the party from whom you acquired or will acquire ownership (i.e., the transferor).

Describe all familial, contractual, corporate, or financial relationships or affiliations you have or had with all prior owners, operators, or transporters of the property (including the person or entity from which you acquired or will acquire the property).

Timing and/or Contribution Toward Hazardous Substances Disposal

Identify whether all disposal of hazardous substances at the property occurred before you acquired (or will acquire) the property.

Did you cause or contribute to any release of hazardous substances at the property before acquiring the property? YES NO

Pre-Purchase Inquiry

Describe any inquiry by you or others into the previous ownership of the property you acquired (or will acquire).

Describe uses and environmental conditions of the property prior to taking ownership.

Indicate any type of environmental site assessments (e.g., ASTM E1527-13 Phase I) performed at the property, the dates of each assessment, and the entity for which they were performed (state whether the assessment was performed specifically for you, or if not, the name of the party that had the assessment performed and that party's relationship to you).

Who performed the All Appropriate Inquiries investigation or Phase I Environmental Site Assessment and identify his/her qualifications to perform the work.

Was the original AAI investigation or Phase I environmental site assessment conducted more than 180 days prior to the date you acquired the property?

YES NO

Did you conduct the appropriate updates of the original assessment within 180 days prior to your acquisition of the property in order to take advantage of the bona fide prospective purchaser, innocent landowner, or contiguous property owner provision?

YES NO

Post-Acquisition Uses

Describe all uses to which the property has been put since you acquired ownership (or the uses that you anticipate once you acquire the property) through the present, including any uses by persons or entities other than you.

Provide a timeline with the names of all current and prior users during the time of your ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (e.g., lease, license, trespass); and your relationship to the current and prior users.

Continuing Obligations

Describe in detail the specific appropriate care that you exercised (or if you have yet to acquire the property, that you will exercise upon acquiring the property) with respect to hazardous substances found at the site by taking reasonable steps to:

- 1. Stop any continuing releases;*
- 2. Prevent any threatened future release; and*
- 3. Prevent or limit exposure to any previously released hazardous substance.*

Describe in detail your commitment to:

- 1. Comply with all land-use restrictions and institutional controls;*
- 2. Assist and cooperate with those performing the assessment and provide property access;*
- 3. Comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and*
- 4. Provide all legally required notices.*

V - Required Attachments

Provide a property location map. The map should cover a radius of 2 miles

Electronic copy (if available) of Phase I and II ESAs and any other environmental reports

VI - Loan Amount Requested

Loan Amount Requested:

Submit completed Property Approval Form to:

Ms. Amy Fisk, AICP, President
Niagara County Brownfield Development Corporation
Vantage Center, Suite One
6311 Inducon Corporate Drive
Sanborn, NY 14132
amy.fisk@niagaracounty.com



Application for Brownfields Financial Assistance

Date Received _____

Project Number _____

Part A

Applicant and Ownership Information

Loan Amount Requested \$ _____

Applicant Information

Name of Applicant Business or Public Entity	Employer Identification Number
Contact Person	Telephone Number
Address	Email
	DUNS Number
Legal Form of Business <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Not-for-Profit <input type="checkbox"/> Municipality	
Attorney Information (Name, Phone Number, Email)	

Ownership of Applicant Business (if applicable)

List all owners of applicant business

Name	Title	Percent of Ownership

Is the company or owner delinquent in the payment of any state or municipal property taxes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the company or owner delinquent in the payment of any income tax obligation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the company or owner delinquent in the payment of any loans?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the company or owner currently in default on any of its loans?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there currently any unsatisfied judgments against the company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there currently any unsatisfied judgments against any of the company's principals?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Has the company ever filed for bankruptcy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have any of the company's principals ever personally filed for bankruptcy or in any way sought protection from creditors?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If this is a current business, are you delinquent or have you been delinquent in the past 12 months in the payment of your sales tax?	<input type="checkbox"/> Yes <input type="checkbox"/> No

If the answer to any of the questions above is "Yes," please provide additional comments on a separate page and attach to the application.

Part B	Project Site Information
Site Name (if applicable)	
Physical Address	
Municipality	Acreage
Tax Identification Number	
Zoning District	
Describe the existing site conditions, including existing buildings and current uses.	

Part C	Environmental Information
Describe the nature of the contamination.	
Is the site enrolled in a NYS Brownfields Program <input type="checkbox"/> Yes <input type="checkbox"/> No	List NYS Site ID #
Briefly describe the proposed cleanup plan.	
What is the proposed start date for the cleanup work?	What is the expected end date for the cleanup work?

Part D**Project Financial Information**

Indicate the estimated total environmental remediation cost. See "What Can Loan Funds Pay For?" Section for a listing of eligible costs.

Environmental Remediation (eligible for EPA funding)	
Professional Fees and Services	\$
Soil Remediation	\$
Groundwater Remediation	\$
Asbestos Abatement	\$
Demolition (if part of cleanup)	\$
Mold and Lead-Based Paint Removal	\$
Monitoring and Maintenance Costs	\$
Other Remediation Expenses	\$
Total Remediation Costs	\$
Total Loan Amount Requested (up to 80% of eligible costs)	\$

Matching Funds

At least 20% of funds used for eligible site remediation activities must come from other sources. Please describe source(s) of matching funds.

Part E**Property Redevelopment**

Briefly describe the proposed redevelopment concept for the property once remediation is completed.

If any development is proposed for the site after remediation please list the anticipated costs in the table below. Firm financial commitments for redevelopment are not required at this time. Redevelopment costs are not eligible for EPA funding.

Property Redevelopment (Post Remediation)	
Demolition (if not part of cleanup)	\$
Construction	\$
Building Rehabilitation	\$
Site Preparation	\$
Professional Services/Soft Costs	\$
Machinery and Equipment	\$
Furnishings and Fixtures	\$
Other Development Costs	\$
Total	\$

Part F	Required Submissions
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For operating entities (existing businesses and not real estate holding companies) the following documents are required as part of the loan application:

- a) Brief description of history and nature of business
- b) Last three years financial statements including balance sheets and income statements
- c) Interim financial statement (if available)
- d) Proposed source of loan repayment
- e) Property ownership documentation
- f) Business Agreement/Articles of Organization
- g) Other documentation as may be required

For real estate holding companies the following documents are required as part of the loan application:

- a) Brief description of history and nature of business
- b) Identification and background of all principal owners
- c) Personal financial statements from all owners with 20% or more total ownership
- d) Most recent yearend balance sheet and income statement
- e) Proposed source of loan repayment
- f) Property ownership documentation
- g) Business Agreement/Articles of Organization
- h) Other documentation as may be required

Niagara County Brownfield Development Corporation will need a copy of a personal credit report for all owners who own *more than 20%* of the business. Please visit www.annualcreditreport.com. You will have a choice of which credit bureau you want your credit report from. Please select TransUnion. Next, you will be asked if you also want to obtain your credit score, please ask for your credit bureau score to be obtained from TransUnion also. There may be a small fee for the credit score. Please submit your credit report with your loan application.

I (we) attest that to the best of my (our) knowledge and belief, the information contained in the foregoing application is correct and true. I (we) am (are) aware that the filing of a false instrument in connection with this application may constitute an attempt to defraud the County of Niagara and may be a felony under the laws of the State of New York. I (we) agree to abide by the provisions of all applicable local, state and federal laws pertaining to falsification of any item contained herein or fraudulent misrepresentation of my (our) business.

I (we) further authorize the County of Niagara to order credit reports and/or other information on my (our) personal financial background (if signatory(ies) is (are) an owner(s) of the company seeking financial assistance) and on the financial background of the company seeking financial assistance.

I (we) acknowledge that this application is not a legally binding document for purposes of receiving loan monies. This loan request may be withdrawn at any time prior to a formal closing of the loan, subject to the terms and conditions of any written loan commitment offered by the County of Niagara or its agent. However, this application is being submitted in good faith as a request for loan funds.

I (we) certifies that to the best of my (our) knowledge and belief that the entity applying for loan assistance, nor any individual, partnership, company or corporation related to the applicant through common ownership or control has caused or contributed to the release of hazardous substances at the proposed brownfield project site, nor arranged for the disposal or treatment of hazardous substances at or from the site; nor violated any provision of the federal, state or local environmental law or regulation relating to the proposed brownfield project site; nor been suspended, debarred or otherwise declared ineligible to receive federal funds.

I (we) attest to the best of my (our) knowledge and belief that the entity applying for loan assistance can incur debt and enter into legally binding agreements.

I (we) acknowledge as a participant in the brownfield loan program, the challenges and successes of this brownfield project may be discussed at any local, state or national meetings or conferences, and project information may be publicized through various media, including brochures, web pages, news articles and press events. These media may include photos of the project site.

The undersigned understands that information submitted may be subject to the New York State Freedom of Information Act.

ACKNOWLEDGMENT OF SIGNATORY(IES)

State of New York

County of _____

On the _____ day of _____ in the year 20____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____ to me known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature of Notary Public

Loan Applicant:
Office or Capacity of signatory(ies):
Notary Stamp: