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Title 22@ Social Security

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Division 4.5@ Environmental Health Standards for the Management of Hazardous Waste

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Chapter 47@ Loan Programs

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Article 1@ Cleanup Loans and Environmental Assistance to Neighborhoods Revolving Loan Fund

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Section 68202@ Definitions

68202 Definitions

Unless the context indicates otherwise and except as provided in this section, the definitions set forth in chapter 6.8 of division 20 of the Health and Safety Code govern interpretation of this article. For the purposes of this article, the following definitions apply:

(a)

"Account" means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b) of section 25395.20 of the Health and Safety Code.

(b)

"Administering Agency" means either the Department, a Regional Board, the State Board, or a Local Oversight Program Agency that oversees all aspects of a site investigation and Response Action conducted on a Property that is the subject of a CLEAN Loan Program Loan. Under section 25395.27 of the Health and Safety Code, the Administering Agency has jurisdiction over all activities required to carry out a site investigation and Response Action necessary to Respond to the Hazardous Materials release at the Property;

(c)

"Applicant" means a Person, as defined in subdivision (ff) that is applying for a Loan under section 68206;

(d)

"Application" means the information an Applicant provides to the Department when seeking a Loan under section 68206;

(e)

"Borrower" means an Applicant whose Application has been approved and who has executed a Loan Agreement under section 68210;

(f)

"Brownfield" means a Property that meets all of the following conditions:(1) It is located in an Urban Area; (2) It was previously the site of an Economic Activity that is No Longer In Operation at that location; (3) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of Application for a Loan pursuant to this article.

(1)

It is located in an Urban Area;

(2)

It was previously the site of an Economic Activity that is No Longer In Operation at that location;

(3)

It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of Application for a Loan pursuant to this article.

(g)

"CLEAN Loan Program Response Action Agreement" means the agreement executed under section 68211 authorizing the Department's oversight of the actions necessary to Respond to the release or threatened release of a Hazardous Material on an Eligible Property for the CLEAN Loan Program;

(h)

"Cleanup and Abatement Order" means an order issued by a Regional Board pursuant to section 13304 of the Water Code;

(i)

"Cleanup Loans and Environmental Assistance to Neighborhoods Loan Program" or "CLEAN Loan Program" means the program established by the Department under section 25395.22 of the Health and Safety Code to provide Loans to finance the performance of any action necessary to respond to a release or threatened release at an Eligible Property.

(j)

"Department" means the Department of Toxic Substances Control;

(k)

"Director" means the Director of the Department of Toxic Substances Control;

(l)

"Economic Activity" means a governmental activity, or a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern;

(m)

"Eligible Applicant" means an Applicant that has an interest in or Economic Activity within the boundaries of an Eligible Property and that is not an Ineligible Applicant as defined under subdivision (q);

(n)

"Eligible Contiguous Expansion" means the expansion onto contiguous property of an operating industrial or commercial facility owned or operated by one of the following: (1) A Small Business; (2) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (part 2 (commencing with section 5110) of division 2 of title 1 of the Corporations Code) or the Nonprofit Religious

Corporation Law (part 4 (commencing with section 9110) of division 2 of title 1 of the Corporations Code); or (3) A Small Business Incubator.

(1)

A Small Business;

(2)

A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (part 2 (commencing with section 5110) of division 2 of title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (part 4 (commencing with section 9110) of division 2 of title 1 of the Corporations Code); or

(3)

A Small Business Incubator.

(o)

"Eligible Property" means a Property that is any of the following: (1) A Brownfield; (2) An Underutilized Property, as defined in subdivision (rr) of this section, that is any of the following: (A) A Property described in subparagraph (E) of paragraph (4) of subdivision (rr) of this section; (B) A Property located in an Enterprise Zone established pursuant to the Enterprise Zone Act (chapter 12.8 (commencing with section 7070) of division 7 of title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to article 4 (commencing with section 33300) of chapter 4 of part 1 of division 24 of the Health and Safety Code, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of section 7072 of the Government Code; (C) A Property, the redevelopment of which will result in any of the following: 1. An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the Economic Activity located on the Property before redevelopment occurred; 2. An increase in Property taxes paid to the local

government that is at least 100 percent greater than the Property taxes paid by the Property owner before redevelopment occurred; 3. Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the Property after the redevelopment occurs; 4. Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of section 65589.5 of the Government Code; or 5. The construction of new or expanded school facilities, public day care centers, parks, open space and habitat area, or community recreational facilities. (3) A Brownfield or an Underutilized Property described in subparagraph (B) of paragraph (2) that will be the site of an Eligible Contiguous Expansion.

(1)

A Brownfield;

(2)

An Underutilized Property, as defined in subdivision (rr) of this section, that is any of the following: (A) A Property described in subparagraph (E) of paragraph (4) of subdivision (rr) of this section; (B) A Property located in an Enterprise Zone established pursuant to the Enterprise Zone Act (chapter 12.8 (commencing with section 7070) of division 7 of title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to article 4 (commencing with section 33300) of chapter 4 of part 1 of division 24 of the Health and Safety Code, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of section 7072 of the Government Code; (C) A Property, the redevelopment of which will result in any of the following: 1. An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the Economic Activity located on the Property before redevelopment occurred; 2. An increase in Property taxes paid to the local government that is at least 100 percent greater than the Property taxes

paid by the Property owner before redevelopment occurred; 3. Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the Property after the redevelopment occurs; 4. Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of section 65589.5 of the Government Code; or 5. The construction of new or expanded school facilities, public day care centers, parks, open space and habitat area, or community recreational facilities.

(A)

A Property described in subparagraph (E) of paragraph (4) of subdivision (rr) of this section;

(B)

A Property located in an Enterprise Zone established pursuant to the Enterprise Zone Act (chapter 12.8 (commencing with section 7070) of division 7 of title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to article 4 (commencing with section 33300) of chapter 4 of part 1 of division 24 of the Health and Safety Code, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of section 7072 of the Government Code;

(C)

A Property, the redevelopment of which will result in any of the following: 1. An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the Economic Activity located on the Property before redevelopment occurred; 2. An increase in Property taxes paid to the local government that is at least 100 percent greater than the Property taxes paid by the Property owner before redevelopment occurred; 3. Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the Property after the redevelopment occurs; 4. Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of section 65589.5 of the Government Code; or 5. The construction of new or expanded

school facilities, public day care centers, parks, open space and habitat area, or community recreational facilities.

1.

An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the Economic Activity located on the Property before redevelopment occurred;

2.

An increase in Property taxes paid to the local government that is at least 100 percent greater than the Property taxes paid by the Property owner before redevelopment occurred;

3.

Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the Property after the redevelopment occurs;

4.

Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of section 65589.5 of the Government Code; or

5.

The construction of new or expanded school facilities, public day care centers, parks, open space and habitat area, or community recreational facilities.

(3)

A Brownfield or an Underutilized Property described in subparagraph (B) of paragraph (2) that will be the site of an Eligible Contiguous Expansion.

(p)

"Hazardous Material" means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. Hazardous Material includes, but is not limited to, all of the following: (1) A hazardous substance, as defined in section 25281 or section 25316 of the Health and Safety Code, including the substances

specified in section 25317 of the Health and Safety Code; (2) A hazardous waste, as defined in section 25117 of the Health and Safety Code; (3) A waste, as defined in section 101075 of the Health and Safety Code, or as defined in section 13050 of the Water Code.

(1)

A hazardous substance, as defined in section 25281 or section 25316 of the Health and Safety Code, including the substances specified in section 25317 of the Health and Safety Code;

(2)

A hazardous waste, as defined in section 25117 of the Health and Safety Code;

(3)

A waste, as defined in section 101075 of the Health and Safety Code, or as defined in section 13050 of the Water Code.

(q)

"Ineligible Applicant" means any of the following: (1) A Person who has been convicted of a felony or misdemeanor involving Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under section 25395.13 of the Health and Safety Code; (2) A Person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering; (3) A Person who the Department determines is in violation of an administrative order or agreement that: (A) Is issued by or entered into with any federal, State, or Local Agency and (B) Requires Response Action; (4) A Person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an Application submitted under this article; and (5) Any Person determined to be

ineligible by the Department under section 68206.

(1)

A Person who has been convicted of a felony or misdemeanor involving Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under section 25395.13 of the Health and Safety Code;

(2)

A Person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering;

(3)

A Person who the Department determines is in violation of an administrative order or agreement that: (A) Is issued by or entered into with any federal, State, or Local Agency and (B) Requires Response Action;

(A)

Is issued by or entered into with any federal, State, or Local Agency and

(B)

Requires Response Action;

(4)

A Person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an Application submitted under this article; and

(5)

Any Person determined to be ineligible by the Department under section 68206.

(r)

"Ineligible Costs" means any of the following: (1) Costs of Phase I Environmental Site Assessments; (2) Costs of Operation and Maintenance as defined in

subdivision (dd); (3) Costs associated with oversight by the Department of the preparation and approval of a PEA, or oversight by the Administering Agency of the response action on the Property; and (4) Costs to conduct a PEA for CLEAN Loan Program Loans only.

(1)

Costs of Phase I Environmental Site Assessments;

(2)

Costs of Operation and Maintenance as defined in subdivision (dd);

(3)

Costs associated with oversight by the Department of the preparation and approval of a PEA, or oversight by the Administering Agency of the response action on the Property; and

(4)

Costs to conduct a PEA for CLEAN Loan Program Loans only.

(s)

"Ineligible Property" means any of the following: (1) Property currently listed or proposed for listing on the National Priorities List pursuant to subparagraph (B) of paragraph (8) of subdivision (a) of section 9605 of the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. § 9605(a)(8)(B)); (2) Property that is, or has ever been, owned or operated by a department, agency, or instrumentality of the United States; (3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the Property is a Brownfield or Underutilized Property described in subparagraph (B) of paragraph (2) of subdivision (o) that will be the site of an Eligible Contiguous Expansion as defined in subdivision (n); or (4) Any Property determined to be ineligible by the Department under section 68206.

(1)

Property currently listed or proposed for listing on the National Priorities List pursuant to subparagraph (B) of paragraph (8) of subdivision (a) of section 9605 of the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. § 9605(a)(8)(B));

(2)

Property that is, or has ever been, owned or operated by a department, agency, or instrumentality of the United States;

(3)

Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the Property is a Brownfield or Underutilized Property described in subparagraph (B) of paragraph (2) of subdivision (o) that will be the site of an Eligible Contiguous Expansion as defined in subdivision (n); or

(4)

Any Property determined to be ineligible by the Department under section 68206.

(t)

"Infrastructure" means basic service systems such as sewer, water, transportation, and utilities;

(u)

"Investigating Site Contamination Program" or "ISCP" means the program established by the Department under section 25395.21 of the Health and Safety Code to provide Loans to conduct PEAs of Eligible Properties;

(v)

"ISCP Environmental Oversight Agreement" means the agreement executed under section 68211 that governs the preparation of a PEA for an Eligible Property under the ISCP Loan program;

(w)

"Leaking Underground Fuel Tank" means a leaking underground fuel tank that is a "tank" as defined in section 25299.24 of the Health and Safety Code;

(x)

"Loan" means a Loan from the Account that is either an ISCP Loan or a CLEAN Loan Program Loan;

(y)

"Loan Agreement" means the written agreement between a Borrower and the Department made in accordance with section 68210;

(z)

"Loan Committee" means representatives of those agencies specified under subdivision (a) of section 25395.23 of the Health and Safety Code: the Department after consultation with the Secretary of the California Environmental Protection Agency, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research or their appointed representatives, and up to three other members selected by the Department who have public or private sector experience or expertise in commercial lending, environmental, or economic development issues;

(aa)

"Local Government Agency" or "Local Agency" means a county, city, city and county, redevelopment agency or district of any type including a school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing;

(bb)

"Local Oversight Program Agency" means a Local Agency that is under contract with the State Board in accordance with chapter 6.7 (commencing with section

25280 of the Health and Safety Code) and chapter 6.75 (commencing with section 25299.10 of the Health and Safety Code) as specified in section 25395.28(a)(1) of the Health and Safety Code;

(cc)

"No Longer In Operation" describes an Economic Activity that has ceased to function or to conduct operations of the type usually associated with the Economic Activity on the Property;

(dd)

"Operation and Maintenance" means those activities initiated or continued at a site following completion of a Response Action that are deemed necessary by the Administering Agency in order to protect public health or safety or the environment, to maintain the effectiveness of the Response Action at the site, or to achieve or maintain the Response Action standards and objectives established by the approved remedial action plan or approved removal action work plan applicable to the site;

(ee)

"PEA-equivalent" means an environmental assessment submitted with a CLEAN Loan application that provides basic information to determine if there is or has been a release or threatened release of a Hazardous Material at the Property at concentrations that may pose a risk to public health and safety and the environment, and that includes all of the activities specified in subdivision (hh)-(1-3);

(ff)

"Person" means an individual, trust, firm, joint stock company, business concern, corporation, partnership, limited liability company, association, redevelopment agency, sole proprietorship, joint venture, non-profit organization, or any Local

Government Agency or Local Agency;

(gg)

"Phase I Environmental Site Assessment" or "Phase I" means an assessment of a Property to determine whether there has been, or may have been, a release of a Hazardous Material based on reasonably available information about the Property and general vicinity. A Phase I may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a Hazardous Material, database searches, reviews of relevant files of federal, State, and Local Agencies, visual and other surveys of the Property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a Phase I Environmental Site Assessment. A Phase I shall be performed in compliance with the licensing and educational requirements in subdivision (d) of section 68205;

(hh)

"Preliminary Endangerment Assessment" or "PEA" means an activity that is performed to determine if there is or has been a release or threatened release of a Hazardous Material that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the Department entitled "Preliminary Endangerment Assessment: Guidance Manual" (June 1999, or as later amended by the Department, which is incorporated by reference). A Preliminary Endangerment Assessment includes all of the following activities: (1) Sampling of a Property, and laboratory analysis of those samples; (2) A preliminary determination of the type and extent of Hazardous Material contamination of a Property; (3) A preliminary evaluation of the risks of Hazardous Material contamination that a Property may pose to public health or the

environment.

(1)

Sampling of a Property, and laboratory analysis of those samples;

(2)

A preliminary determination of the type and extent of Hazardous Material contamination of a Property;

(3)

A preliminary evaluation of the risks of Hazardous Material contamination that a Property may pose to public health or the environment.

(ii)

"Project" means any Response Action and the planned future development of the Property included in an Application;

(jj)

"Project Coordinator" means the Person or Persons that possess the requisite qualifications to manage the Response Action at the Property and who have been identified as intended to manage the Response Action;

(kk)

"Property" means the Property within the boundaries described as the Property boundaries in the Application submitted under section 68206. A Property may be all or a portion of a site where there is a known or suspected release or threatened release of a Hazardous Material;

(ll)

"Regional Board" means a California Regional Water Quality Control Board;

(mm)

"Response," "Respond," or "Response Action" have the same meanings as defined in section 9601(25) of the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601(25)). The enforcement and oversight activities of the Administering Agency are included within the meaning of "Response," "Respond," or "Response Action";

(nn)

"Secured Creditor Insurance" has the same meaning as defined in subdivision (k) of section 25395.40 of the Health and Safety Code;

(oo)

"Small Business" means an independently owned or operated business, that is not dominant in its field of operation that together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in section 14837 of the Government Code, with 100 or fewer employees;

(pp)

"Small Business Incubator" means a Small Business Incubator that is undertaking a contiguous expansion of an operating industrial or commercial facility with the assistance of a grant authorized by section 15339.3 of the Government Code or a loan guarantee provided pursuant to section 14090 of the Corporations Code;

(qq)

"State Board" means the State Water Resources Control Board;

(rr)

"Underutilized Property" means Property that meets all of the following conditions:

(1) It is located in an Urban Area; (2) An Economic Activity is conducted on the Property; (3) It is the subject of a proposal for development pursuant to this article; and (4) At least one of the following applies: (A) The Economic Activity on the Property is irregular or intermittent in nature and uses the Property for

productive purposes less than four months in any calendar year; (B) The Economic Activity on the Property employs less than 25 percent of the area of the Property (as measured in square feet) for productive purposes; (C) The structures, Infrastructure, and other facilities on the Property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal; (D) The Economic Activity conducted on the Property is a parking facility or another activity that offers a similar marginal economic service and the facility or activity will be replaced when the Property is redeveloped; or (E) The Property is adjacent to one or more Brownfields that are the subject of a Project under this article and its inclusion in the Project is necessary in order to ensure that the redevelopment of the Brownfield or Brownfields occurs.

(1)

It is located in an Urban Area;

(2)

An Economic Activity is conducted on the Property;

(3)

It is the subject of a proposal for development pursuant to this article; and

(4)

At least one of the following applies: (A) The Economic Activity on the Property is irregular or intermittent in nature and uses the Property for productive purposes less than four months in any calendar year; (B) The Economic Activity on the Property employs less than 25 percent of the area of the Property (as measured in square feet) for productive purposes; (C) The structures, Infrastructure, and other facilities on the Property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in

order to implement the redevelopment proposal; (D) The Economic Activity conducted on the Property is a parking facility or another activity that offers a similar marginal economic service and the facility or activity will be replaced when the Property is redeveloped; or (E) The Property is adjacent to one or more Brownfields that are the subject of a Project under this article and its inclusion in the Project is necessary in order to ensure that the redevelopment of the Brownfield or Brownfields occurs.

(A)

The Economic Activity on the Property is irregular or intermittent in nature and uses the Property for productive purposes less than four months in any calendar year;

(B)

The Economic Activity on the Property employs less than 25 percent of the area of the Property (as measured in square feet) for productive purposes;

(C)

The structures, Infrastructure, and other facilities on the Property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal;

(D)

The Economic Activity conducted on the Property is a parking facility or another activity that offers a similar marginal economic service and the facility or activity will be replaced when the Property is redeveloped; or

(E)

The Property is adjacent to one or more Brownfields that are the subject of a Project under this article and its inclusion in the Project is necessary in order to ensure that the redevelopment of the Brownfield or Brownfields occurs.

(ss)

"Urban Area" means either of the following: (A) A central city or a group of

contiguous cities with a combined population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile; or (B) An urbanized area. "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202 and 15203, and as periodically updated. Urbanized areas are listed in Appendix 1.

(A)

A central city or a group of contiguous cities with a combined population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile; or

(B)

An urbanized area. "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202 and 15203, and as periodically updated. Urbanized areas are listed in Appendix 1.