

Chapter 2: COMMERCIAL FACILITIES DEVELOPMENT PROGRAM

Summary: The Maine Rural Development Authority is responsible for administering the Commercial Facilities Development Program. This rule governs the application and approval process for financial assistance from the Program.

SECTION 1. DEFINITIONS

- A. **Act:** "Act" means 5 MRSA Chapter 383, Subchapter IX.
- B. **Applicant:** "Applicant" means any municipality, any governmental entity, any corporation, any partnership, any limited liability company, any private, nonprofit or public entity, organization or association, any individual or any other person which applies for assistance from the Program.
- C. **Authority:** "Authority" means the Maine Rural Development Authority, or as the context requires, any agent, employee or other representative of the Authority.
- D. **Carrying Costs:** "Carrying Costs" means reasonable costs incurred for the maintenance, protection and security of a Project prior to its completion or its occupancy or control by the Owner, including, but not limited to, insurance, taxes and interest.
- E. **Commercial Facility:** "Commercial Facility" shall mean real estate and improvements used principally for commercial purposes or suitable for commercial use as defined in 5 MRSA §13120-B (4). The term commercial facilities includes, but is not limited to:
 - (1) Offices and office buildings;
 - (2) Manufacturing, processing, assembly and other industrial buildings and related improvements;
 - (3) Property used in connection with commercial fishing and other marine-related industries;
 - (4) Property used in conjunction with agricultural production, storage, processing, packing and transportation;
 - (5) Warehouses, transportation and distribution facilities;
 - (6) Service and repair facilities;
 - (7) Retail establishments; and
 - (8) Lodging, restaurant and entertainment facilities.

- F. **Comprehensive Plan:** "Comprehensive Plan" shall mean a plan that is determined by the Executive Department, State Planning Office to be consistent with 30-A MRSA §4326(1-4), and has been adopted by the city or town, as applicable.
- G. **Construction Costs:** "Construction Costs" means any cost or expenditure with respect to a Project, which is properly chargeable under the Internal Revenue Code of 1986, as amended, to the capital account of any person or state or local government. In no event shall "Construction Costs" include either "Carrying Costs" or the cost of providing and maintaining and plowing an adequate access road from a public highway to the Commercial Facility or maintaining water, sewer and power facilities or paying any service charge for water, sewer, power or other such services or utilities.
- H. **Development Project:** "Development Project" means the acquisition of property and development of a Commercial Facility for subsequent sale or lease into private productive use.
- I. **Eligible Costs:** "Eligible Costs" means Construction Costs.
- J. **Lease:** "Lease", as defined at 5 MRSA §13120-8 (7), means a contract providing for the use of a Project or portions of a Project for a term of years for a designated or determinable rent. A lease may include an installment sales contract.
- K. **Local Growth Management Program:** "Local Growth Management Program" shall mean the town has adopted a growth management program that certified by the Executive Department, State Planning Office, under 30-A MRSA §4347-A.
- L. **Local Development Corporation:** "Local Development Corporation" shall have the meaning set forth in the Act, 5 MRSA §13120-8(9).
- M. **Municipality:** "Municipality," as defined in 5 MRSA §13120-8(1 0), means any county, city or town in the state.
- N. **Owner:** "Owner" means the entity or association (a) designated by the Authority as the recipient of financial assistance for a Project pursuant to the Program and (b) in which the Authority may have an ownership interest.
- O. **Program:** "Program" means the Commercial Facilities Development Program.
- P. **Project:** "Project" means (a) a Redevelopment Project or (b) a Development Project.
- Q. **Redevelopment Project:** "Redevelopment Project" means the acquisition and redevelopment of a nonproductive Commercial Facility for subsequent return to productive use through sale or lease.

SECTION 2. ELIGIBLE DEVELOPMENT AND REDEVELOPMENT PROJECTS

The Authority may undertake a Development or Redevelopment Project, as owner or lender, for subsequent use and sale under the following conditions:

- A. A Development Project must involve real estate that is zoned, sited, or otherwise suitable for development as a Commercial Facility. A Redevelopment Project must have been previously and materially used as a Commercial Facility, or must be suitable for adaptation to a commercial or industrial use.
- B. A Redevelopment Project or Development Project must involve real estate that is currently not in productive commercial use or, with respect to a Redevelopment Project, is expected to be taken out of productive use within the immediate future;
- C. The Redevelopment Project or Development Project must involve real estate that has not been placed under a purchase option or contract under circumstances that would reasonably indicate that the property would be developed without Authority assistance, or that the proposed use would not meet the other requirements of this Section 2.
- D. The Authority, using due diligence, has determined that:
 - (1) There is a reasonable expectation that the Development or Redevelopment Project will become financially viable following its redevelopment;
 - (2) With respect to a Development Project, it will create employment opportunities and other economic benefits within the region; and
 - (3) The economic benefits, including the creation or restoration of employment opportunities, expected to result from the Development or Redevelopment Project justify the risks associated with the Authority's equity interest in the Development or Redevelopment Project.
- E. Except as provided in Section 3, at least twenty-five percent (25%) of the total cost of the Development or Redevelopment Project will be borne by the Municipality, Local Development Corporation, or another entity.
- F. To the extent the Development Project involves undeveloped land or personal property, such undeveloped land or personal property is part of the overall Redevelopment or Development Project that meets the requirements of this Section 2.

SECTION 3. EXCEPTIONS TO PUBLIC CONTRIBUTION REQUIREMENT

The Authority, with the advice of the Department of Economic and Community Development, the Department of Labor, the State Planning Office and such other agencies as the Authority determines are appropriate, may waive the requirements of Section 2 (E) or (F) above, if the Municipality in which the Development Project or Redevelopment Project is located has experienced a historical lack of private investment, and it is reasonably expected that private investment will not be available to assist with financing of the Project and one of the following conditions is met:

- A. The Project is located in a Municipality that has experienced a sudden and severe economic dislocation, which may include but is not limited to:
 - (1) The loss of a significant percentage of jobs within the Municipality due to the closure or downsizing of a business or other employer;
 - (2) The loss of a significant percentage of the Municipality's tax base due to the closure or downsizing of a business or other commercial taxpayer; or
 - (3) The unanticipated loss of a significant percentage or component of a Municipality's economic development infrastructure as a result of an accident, natural disaster or other catastrophe; or

- B. The Project is located in a Municipality that has experienced long-term economic distress, as evidenced by factors that may include, but are not limited to:
 - (1) An unemployment rate that is significantly greater than the average state unemployment rate;
 - (2) The significant migration of workers or population out of the area; and
 - (3) An average personal income that is significantly below the state average or considered to be at or below the poverty level as defined in 22 MRSA §5321.

SECTION 4. ADDITIONAL PROJECT ELIGIBILITY REQUIREMENTS

- A. In order to be eligible for financial assistance from the Program, an Applicant must demonstrate that the Project will meet all the following criteria, as determined by the Authority:
 - (1) Market need for the Project;
 - (2) Economic need for the Project;
 - (3) Financial capacity to provide the Authority with a return of and on its investment;
 - (4) The Applicant has the right, title and interest in the property required to develop the Project; and
 - (5) Capacity to market and manage the Project.

- B. No later than one year after the initial provision of financial assistance from the Program, the Owner must provide a financial return on the Authority's investment on the terms specified in the agreement with the Authority.

- C. The Authority shall not provide financial assistance from the Program greater than the sum of the total costs for acquisition development and/or redevelopment of a Project, as determined by the Authority. All other costs, such as those associated with ongoing operations, marketing and administration, are not eligible for financial assistance from the Program.

- D. The Authority will consider geographic location of a Project, to avoid over concentration of Authority projects in one area of the state.
- E. A Project must be located on a developable site in accordance with all state, federal and local regulations. Such site must have adequate utilities and services to support the intended use of the building and the use of the building for business and commercial purposes.
- F. The Authority shall consider the state economic development strategy and the policies and activities of the Department of Economic and Community Development in evaluating a Project.
- G. *[Repealed]*
- H. The Authority will not approve an application for financial assistance from the Program where, in the Authority's judgment, the Authority's financial assistance would supplant financial assistance from other federal, state or local development assistance programs. The Authority will consider restructuring existing debt, if that restructuring makes the project feasible.

SECTION 5. APPLICATION PROCEDURES

A. Application

- (1) An Applicant shall submit an application complying with the requirements of this rule on forms developed by the Authority as may be specified with supporting information as required by this rule and additional information as requested by the Authority.
- (2) The Authority shall be responsible for making application forms available.
- (3) In its evaluation of an application, the Authority will consider the following, in addition to other requirements of this Rule:
 - (a) **Project Description** - Describe how financial assistance from the Program will be used. Include a Project capital budget.
 - (b) **Comprehensive Nature of Project** - Description of how the Project relates to the Municipality's total economic development effort. Include a description of how the Project will address the requirements of Section 2, 3 or 4 of this Rule as applicable. The application must detail how the Project will address the problems identified and must include a plan to market and manage the facility, including an operating budget and pro forma cash flow projections.
 - (c) **Feasibility** - Identification of tasks, timetables and the responsible parties to implement the proposed Project. Application must also identify the market need for the project.

- (d) **Right to develop** - Evidence of the Applicant's right, title and interest.
 - (e) **Evidence of local support.**
 - (f) **Commitment/Match** - Identity and describe the source, amount and terms of the matching funds, as applicable.
- (4) No application will be considered complete unless all questions are answered and all supporting information is provided.
- (5) Upon approval of an application by the Authority, a commitment shall be issued setting forth the terms and conditions under which the financial assistance from the Program will be provided. The commitment shall include a list of conditions that must be satisfactorily met. The following requirements may be specified.
- Drawings, plans, specifications
 - Appraisals, bonds, guaranties
 - Permits, approvals, surveys, title insurance, opinions
 - Financial statements, cost, other certifications and
 - Other instruments evidencing full compliance with the Authority's requirements and in form and content satisfactory to the Authority.
- (6) No commitment shall become effective until the Applicant has signed it and the Applicant has agreed to pay to the Authority the fees specified in the program application, and other applicable fees. Authority fees, excluding the Authority's costs in connection with the financial assistance, will not exceed 2% of the total financial assistance.
- (7) If, upon examination of the application and supporting information, the Authority rejects an application, the Applicant shall be informed of the rejection and the reasons. Rejection of a Project may occur at any time.

B. Special Terms for Construction/Development Loans

- (1) Construction/Development lending is financing to be used for acquiring property or rights to property, including land or structures, with the intent to develop or convert it to income-producing property; commercial use; industrial use; or similar uses, including the necessary costs of renovation or development of property. Due to the additional risks associated with construction lending including, but not limited to cost overruns and/or failure to complete, additional application materials may be required. An applicant may be required to submit all or some of the following before a commitment can be issued.
- (a) Site plans, including plans for landscaping and lighting the building, surface water runoff control, utilities connections, and all other non-eligible costs. The plans and specifications shall clearly outline the

scope of work for the Project. Plans and Specifications documenting the following may be required: a boundary survey indicating property lines, all utilities including water, sewer and power, building footprint, landscaping, surface water runoff control and associated parking. The Applicant may be required to submit plans and specifications for the proposed Project that have been prepared by either a registered architect and engineer in Maine or another party acceptable to the Authority.

- (b) Floor plans, elevations, wall sections, foundation plan, structural system, mechanical and electrical systems and details indicating the size, height and overall scope of the proposed building.
- (c) Specifications indicating the type and quality of the systems and material that will be used in the construction of the building.
- (d) Building design, including the foundation, structure and architectural design.
- (e) Evidence of the suitability of the proposed site, including soil analysis and municipal services.
- (f) Evidence of construction bonding or builders risk insurance.
- (g) Evidence that an adequate access road exists to the project.
- (h) Evidence that all appropriate licenses and permits to construct, operate and occupy the building have been obtained.
- (i) Evidence that the site is consistent with all applicable ordinances and requirements.
- (j) Evidence that the Applicant has right, title and interest to the Project.
- (k) Final bid documents and an assignment of construction documents for the Project.
- (l) Lien waivers and independent party inspection of work completion, at the Borrower's expense.

C. General Terms

- (1) Financial assistance will be provided in an amount that corresponds with the funds available to the Authority and is reasonable to develop or redevelop a Project as demonstrated by a contractor's bid package.
- (2) Financial assistance must provide a return to the Authority on such terms as will be acceptable to the Authority. Interest on any loan shall be up to 2% over the Wall Street Prime Rate as published in the Wall Street Journal on the date the Letter of Commitment is executed by the parties, provided that the Authority may require higher interest rates on any loan that is not repaid within five (5) years from the date of the loan.

- (3) When the Authority is acting as principal, partner or investor, the Authority must be provided with title to the Development Project, or with stock or other equity interest in the Project, on such terms as will be acceptable to the Authority. When the Authority is acting as lender, a loan must be secured by collateral having a fair market value sufficient to provide adequate security for the loan, and/or such guarantees and/or other financial support, or incentives from the Municipality or other party as may be required to assure repayment and Project feasibility. The Authority may require a first lien on collateral.
- (4) The term of the financial assistance must be based on the Applicant's financial need and circumstances, and the useful life of the Project. The principal balance and all accrued and unpaid interest must be repaid in full to the Authority no later than 20 years from the date of the loan.
- (5) The financial assistance will be used only for acquisition, development or redevelopment costs and/or Construction Costs.
- (6) Periodic payments shall be established in accordance with the Applicant's individual needs. The Authority may defer up to one (1) year's payment of interest and principal. The Authority may allow deferred principal and/or interest to be paid at the earlier of the date when the Project is sold, or loan maturity. When the Applicant shows extreme financial need, as determined in the discretion of the Authority, interest due may be abated in whole or in part.
- (7) The Authority may limit its disbursements so that the undisbursed portion of the Project financing shall be sufficient at all times to cover the Project costs.
- (8) In the event of default, the financial assistance may be declared immediately due and payable.
- (9) The Applicant will agree to the following terms and conditions in the loan documentation, as may be applicable:
 - (a) The Applicant will comply with all applicable planning, zoning, sanitary, building and environmental laws, ordinances and regulations of the federal, state and local governments.
 - (b) The Applicant will agree not to convey, lease or transfer any collateral for the financial assistance without the prior written consent of the Authority.
 - (c) The Applicant will expend no portion of the financial assistance directly or indirectly for purposes other than those approved by the Authority.
 - (d) While the Project remains unoccupied and is owned by the Authority, it is declared by the Act to be property held for a legitimate public use and benefit and to be exempt from all taxes and special assessments of the state or any of its political subdivisions.

- (e) The Applicant will keep insured to the satisfaction of the Authority all insurable property constituting the Project and will maintain the Project in good condition and repair.
- (f) The Applicant will not materially alter or relocate collateral without the prior written consent of the Authority.
- (g) The Applicant will comply with such other covenants as the Authority impose or establish in order to protect the Authority's interests. Any such other covenants shall be expressly set forth in the financial assistance commitment or exhibits or attachments.
- (10) **Use of Financial Assistance Proceeds.** The Applicant shall use financial assistance proceeds for the purposes stated in the commitment and the Applicant's rights under the commitment shall not be assignable, except to the Owner.
- (11) **Inspection.** The Applicant will allow the Authority or its designee access to the Project at any reasonable time to inspect the construction, redevelopment or operation of the Project.
- (12) **Certification of Payments.** The Applicant shall provide to the Authority a certificate of payment from the architect or engineer of record, or such other authorized agent, based on the architect's or engineer's or agent's evaluation of the work and on the data comprising the contractor's application for payment, that the work has progressed to the point indicated and, that to the best of the architect's or engineer's or agent's knowledge, information and belief, the quality and quantity of the work is in accordance with applicable development or redevelopment plans and agreements. Construction loan advances should be made in a manner that limits risks of intervening mechanic liens, which may include requirement of dual party checks and lien waivers exchanged with all payment to contractors, subcontractors and others working on a Project.

SECTION 6. COMMERCIAL FACILITIES DEVELOPMENT PROGRAM ADMINISTRATION

- A. Operating expenses of the Authority must be charged to the Program and all repayments of financial assistance must be credited to the Program. Expenses of the Authority that arise out of financial assistance to Municipalities and Applicants under the Program may be charged against any proceeds of the sale or lease of Projects.
- B. In order to protect the integrity of the Program, the Authority may charge Applicants such administration, servicing and document preparation fees as the Authority deems reasonable.

SECTION 7. LENDING POWER

The Authority may not, pursuant to the Program, make any commitment to lend, or lend, money with respect to a Project prior to the effective date of an act permitting the Authority to do so.

SECTION 8. WAIVER OF RULE

The Authority may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, or required by state, federal or municipal laws or in cases where deviation from the rule is insubstantial. Waiver of any requirement of the rule must be made prior to the execution of a financial assistance commitment.

STATUTORY AUTHORITY: 5 M.R.S.A. §13120-L; 5 M.R.S.A. §13120-N(I)(D)

EFFECTIVE DATE:

August 2, 2003 - filing 2003-255

AMENDED:

January 21, 2014 – filing 2014-007 (Amendment 1)

September 3, 2016 – filing 2016-147 (Amendment 2)