Local Innovation and Fast Track (LIFT) Financial Structuring Subcommittee

Work Session 2: October 15, 2015
9:00 a.m.-12:00 p.m., OHCS Conference Room 124
725 Summer Street NE, Salem, Oregon 97301

Oregon Housing and Community Services

Members

Brad Bullock
City Real Estate Advisors, Inc.

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Geller Silvis & Associates, Inc.

Sean Hubert
Central City Concern

Ed McNamara
Turtle Island Development LLC

Janet Merrell
Community Action Partnership of Oregon

Nelda Newton
Wells Fargo Bank

Facilitator

John Seasholtz
Seasholtz Consulting, Inc.

Meeting Objectives: At the end of the meeting the subcommittee will have:

- Outlined the key assumptions needed to model various ownership/development scenarios to determine the most effective and efficient structures, as well as anticipated unit production for program delivery;
- Shared understanding of risk mitigation strategies associated with each ownership scenario; and
- Shared understanding of roles and strategies for ongoing operational and compliance monitoring.

Agenda

1) Welcome and Overview (20 minutes)
   - Agenda review
   - Review revised deliverables and timeline
   - Agree on what we want to accomplish
   - Recap from Policy Committee
   - Review of questions for DOJ and Legislative Council to consider

2) Discussion: Modeling Assumptions (60 minutes)

Break (10 minutes)

3) Discussion: Risk Mitigation Strategies (45 minutes)

4) Discussion: Ongoing Operational and Physical Condition Monitoring; and Compliance Monitoring (30 minutes)

5) Next Step / Homework (15 minutes)

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$40 MM LIFT Program Additional Legal Questions

In an effort to leverage other private resources and financing structures to stretch the available $40 million of Article XI-Q Bonds and create as much affordable housing as possible, OHCS has been asked to look at the possibility of utilizing the ownership and operational structures presented below. Staff is looking to understand whether or not the following structures satisfy the constitutional requirements for use of Q Bond proceeds.

1. May OHCS satisfy the Article XI-Q Bond ownership requirement by entering into a long-term master lease, as lessee, of all or part of an existing multifamily housing project? The rationale behind such a leasehold ownership structure is that OHCS would be able to effectively "purchase" units at a cost per unit that would be lower than developing an entire project and, therefore, could maximize unit production.

2. Is there an ability to leverage projects financed with Article XI-Q Bonds with 4% LIHTCs or other funding, utilizing one or more of the structures below?

    a. OHCS purchases the underlying real property (land) and enters into a long-term ground lease, as lessor, with an affordable housing developer who utilizes 4% LIHTC and other tax-exempt bond programs to finance the overall housing development. If the Q Bond financing is just used for acquisition and, possibly, development of the land, would such an approach satisfy the ownership standard of Article XI-Q?

    b. OHCS purchases a multifamily housing project, land and improvements, utilizing Article XI-Q Bonds and then enters into a master lease agreement, as lessor, with a 4% LIHTC tax credit entity or other entity in which a tax creditor participates to rehabilitate, own, and operate (manage) the project leasehold interest. Would OHCS have an appropriate ownership interest by virtue of holding the deed to the land and improvements for Article XI-Q Bond purposes, while the tax credit entity would be deemed to have sufficient ownership through the leasehold to enable its use of 4% LIHTCs and other tax-exempt bond financing?

    c. May OHCS meet the Article XI-Q Bond ownership requirement by as a general partner of a limited partnership or managing member of a limited liability company where the general partner or managing member owns a .01% of the limited partnership or limited liability company that actually owns the affordable housing development for which Q Bond funding is used, but would be responsible for the day-to-day operations of the property? If yes and there is more than one entity within the general partner or managing member, what role would OHCS have to play to meet the Article XI-Q Bond ownership requirement?

d. May OHCS meet the Article XI-Q Bond ownership requirement in the role of a special limited partner or member in a limited partnership or limited liability company, respectively, where such partnership or company owns the affordable housing development for which Q Bond funding is used?.

3. If the answer to Question 2.c. or 2.d. is yes, may OHCS further limit risks inherent in development and still meet the Article XI-Q Bond ownership requirement by becoming a limited partner or limited member in a limited partnership or limited liability company, respectively, on a prorated basis with other limited partners or members after completion of the project development?

4. May OHCS satisfy the operational standard of Article XI-Q with either of the following structures:

   a. May OHCS satisfy the operational standard of Article XI-Q as a limited partner in a limited partnership or limited member in a limited liability company if OHCS effectively controlled the public purpose use of the project development through the detailed terms of the entity operating agreement of which it would be a party and by taking (in its own name, with right of action as the beneficiary) the beneficial interest in restrictive covenants guaranteeing operation of the project for the intended public purpose and recorded against the project by the limited partnership or limited liability company owner?
   b. If the answer to 4.a. is no, would it make a difference if the ownership interest held by OHCS in the limited partnership or limited liability company were as a general partner or managing member and OHCS? What if OHCS and the general partner or managing member contracted with a management company to perform the day-to-day management of the property pursuant to a detailed management agreement ensuring operation of the project for its intended public purpose?

5. How would the utilization of Q Bonds to fund a project on tribal lands impact the answers above, given tribal sovereignty and the inability of OHCS to obtain fee simple title to project land? Particularly, would a leasehold ownership interest in tribal land satisfy the Article XI-Q ownership standard and would operational control through a limited liability company or limited partnership of a leasehold interest in tribal land still be sufficient to satisfy the operational requirement of Article XI-A?

Modeling Scenarios

All scenarios to consider:
Urban vs Rural locations, varying Project Sizes, inclusion of 4% LIHTC and not including 4% LIHTC

Variables	Modeling Scenario 1	Modeling Scenario 2	Modeling Scenario 3
Income / Rent Limit mix			
Bedroom mix			
% Project Based Vouchers			
LTV			
DCR			
Additional Operating expenses attributed to LIFT program			