

Affordable Housing Land Acquisition Revolving Loan Program (LAP)

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Program Manual

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Program Description

Introduction

The Affordable Housing Land Acquisition Revolving Loan Program (“LAP”) exists in statute¹ to assist eligible organizations in Oregon to purchase bare land for affordable housing development. Eligible organizations are defined in statute as the following:

- Local governments
- Local housing authorities
- Nonprofit community or neighborhood-based organizations
- Federally recognized Indian tribes in Oregon
- Regional or statewide nonprofit housing assistance agencies

Successful loan recipients will demonstrate sound experience and strong development capacity. LAP is a revolving loan program intended to assist with site acquisition for eventual use as affordable housing; LAP is not a short-term acquisition bridge financing program. Receipt of a LAP loan does not guarantee future OHCS funding awards.

The intent of the program is to respond quickly to the needs of applicants to secure sites as they become available in markets where there is an urgent need for affordable housing and there is competition for limited developable land.

Disclosure

Materials and information applicants submit as part of the application process are subject to public disclosure unless otherwise exempt from disclosure under the Oregon Public Records Act (ORS 192.311 through ORS 192.478). No assurances can be given that any materials provided can be protected from public review and copying.

OHCS reserves the right to reject any and all applications with or without prejudice, and to negotiate acceptable applications with selected applicants.

Resource Funding Uses, Set asides, and Goals

Funding Uses – Homeownership & Rental

Legislative requirements include focusing the use of LAP funds for organizations building and operating homeownership programs, including community land trust, condominiums, or manufactured home co-op, or rental housing for households with

¹ ORS 456.502

income less than or equal to 80% of the HUD area median income (“low-income households”).

All new funding allocations from the Legislature, and recycled funds from repaid LAP loans are subject to the following “funding use” split:

- 40% of available funds to be set-aside for homeownership development for low-income households. (“Homeownership Set Aside Fund)
- 60% of available funds to be set-aside for affordable rental housing development for low-income households. (“Affordable Rental Housing Set Aside Fund”)

Timing of Funding Use Set-Asides – New Allocations

If a new LAP Homeownership Set Aside Fund allocation is not fully utilized by any location-based set-aside after a six (6) month period, all unallocated Homeownership Set Aside funds will be combined.

Timing of Funding Use Set-Asides – Recycled Funds

All repaid loans will be placed in a General LAP Fund that may be used by any eligible organization for any region in Oregon, subject to the Funding Use split mentioned earlier. The 40% Homeownership / 60% Affordable Rental Housing split will be held for a twelve (12) month period, after which all unallocated funds will be combined into a single fund that can be used for either Homeownership or Affordable Rental Housing loans.

Initial Resource Set-Asides

LAP is designed to be flexible in utilization, allowing for this funding source to be targeted towards specific regions within the State. Previous LAP funding investments have totaled \$22.5 million. OHCS has utilized these investments and the program flexibility to provide intentional opportunity in different regions across Oregon as well as culturally specific organizations. To balance this opportunity with fund utilization, OHCS uses location-specified set asides for the first 12 months in Affordable Rental Housing and for the first 6 months in Homeownership of each new funding allocation.

Location-Specified

Funding allocations to LAP are divided into location-based funding source set asides using a needs-based calculation that will take into consideration various housing specific benchmarks. For example, the aggregate age of current housing stock, housing cost burden for both homeowners & renters, population density, and/or monthly rents may be considered.

Program Funding Updates

Upon program funding availability, the Homeownership Set Aside Fund and the Affordable Rental Housing Set Aside Fund will be utilized to fulfill approved LAP loan application requests until such time that the individual fund source balance, plus any available General LAP Fund balance has fallen below the fund threshold limit. Any fund balance (including any available General LAP Fund balance) that falls below threshold limits will result in a temporary cessation of the program fund until such time that recycled or new funding increases the balance above threshold limits. When a fund balance increases above the threshold limit, a minimum 30-day public notice will be provided, and the fund will be reopened for program loans. Threshold limits for each fund are as follows:

- a. Homeownership Set Aside Fund – Threshold Limit = \$100,000**
- b. Affordable Rental Housing Fund – Threshold Limit = \$150,000**

***Threshold limits include the available balance of the General LAP Fund which acts as a supplementary fund for both Affordable Homeownership and Rental programs.*

Application Deadlines:

LAP is a rolling loan program with no application deadline. Applications will be considered for funding as they are received, dependent upon the availability of funds.

Program Goals and Reporting Requirements

OHCS is required to annually report to the Legislature three established performance measures: the ability of eligible organizations to access land for affordable housing development; the total number of dwelling units by housing type and total number of low-income households and persons served; and the financial efficiency of the program demonstrated by certain factors including cost per unit and the number of units developed across Oregon. LAP awardees are required to annually record and report data that enables OHCS to meet its reporting requirements.

Program Requirements

Eligible Uses of Purchased Property

OHCS LAP resources are available solely to purchase property that will be used to provide affordable housing (or provide services in conjunction with affordable housing) for low-income families. Property (including portions of the property) utilized for any other purpose is not eligible for LAP funding. Program funding is limited to acquiring property for the purpose of new construction. Property with facilities designated for renovation is not eligible. Exceptions for renovation may be allowed for incidental buildings on a case-by-case basis (i.e., a maintenance or storage shed). The acquisition of property with

buildings to be demolished is eligible for LAP funding. Use of the acquired property is restricted to the development of affordable housing that will meet funding use requirements and to build other structures intended to provide resident services to affordable housing residents and low-income households in the nearby community.

Loan Terms

LAP loans have a 1% simple interest rate with a 1% loan fee with a maximum term of eight years. Interest and principal payments are deferred for the life of the loan. Affordable housing developed on LAP financed land must be placed in service by the end of the eighth year. For this reason, it is anticipated that most loans will be repaid within four to six years using funds received to construct the affordable housing development. Loan repayments will be recycled to finance future transactions. **Receipt of a LAP loan does not provide the loan recipient with a guarantee or preference for any other OHCS financing product.**

Loan Security Position

OHCS will utilize the purchased property to secure the LAP loan. OHCS shall be in the first lien position on all property loan documents.

Affordability Restrictions

All housing units developed on the property acquired under LAP shall be preserved as affordable housing for a minimum of thirty (30) years. The affordability restrictions shall be recorded at the applicant's expense against the property receiving LAP funding through documents acceptable to OHCS including, but not limited to, restrictive covenants. The restrictive covenants will provide for, but is not limited to, income and rent restrictions for all future housing units held at 80% AMI² for a minimum of 30 years. Affordability restrictions will take effect upon the closing of the LAP loan.

Loan to Value (LTV)

Subject to funding availability, there is no maximum loan amount for LAP loans. LAP loans are limited to and will not exceed 90% of the appraised value. Property secured at a below fair market value may result in 100% financing if it still meets the 90% loan to appraised value criteria. Applicants are strongly encouraged to leverage LAP funds with other sources in a way that maximizes the use of the other financing sources.

² For Homeownership LAP loans, long term affordability will require a community land trust (CLT), condominium structure, or co-op structure with an eligible covenant holder. For more information see ORS 456.270.

Applicability of Program Affordability Restrictions

Program affordability restrictions are applicable to all property purchased using LAP resources. For portions of the purchased property that are not needed for a project, consideration may be given to actions to address boundary lines as determined appropriate for the specific needs of the property. This includes, but is not limited to, selling excess property. In such event, any realized gain from excess property disposition will be split per program guidelines by the developer and OHCS. See Appendix B for more information.

Purchase Sale Agreements

Property already purchased or donated by the prospective applicant does not qualify for LAP loans. Any property with a cost reimbursement agreement is not eligible for LAP financing. Option agreements or purchase sale agreements must be signed within the 12 months prior to the application submission date.

Arm's Length Transactions

Loans will not exceed actual buyer costs and all transactions must be arm's length. Transactions involving any "identity of interest" are not eligible for program funding. Identity of interest is defined as any relationship in which the purchaser and seller are related, connected or affiliated through a business, personal, or financial relationship.

Property Re-Sale

If the property is sold, any financial gap between the sale price and the amount owed to OHCS is the responsibility of the applicant. See Appendix B for more information on the sale of the property.

Required Reporting

Loan recipients are required to provide an annual update on project progress utilizing the LAP Annual Update Form. Completed LAP Annual Update Forms are due by January 10 each year. Loans closed on or after July 1 (within 6 months of the January 10 due date) are not required to submit an annual update the first year. Program default procedures may be commenced on loan recipients that do not submit the LAP Annual Update Form timely. The LAP Annual Update form will be uploaded to the project's Procorem Workcenter by December 1 each year.

Within five years of receiving a LAP loan, a loan recipient must present OHCS with an updated development plan, including a proposed development design, committed and anticipated additional financial resources to be dedicated to the development, and an

estimated development schedule that indicates completion of the development within eight years of loan receipt.

OHCS may require a loan recipient to complete an exit report after the repayment of LAP resources. The report may request information including but not limited to: organizational changes made since the application was submitted under the Diversity Equity and Inclusion (DEI) agreement, LAP process assessment, and LAP program recommendations.

Application Submission Process

LAP applications are accepted on a rolling basis with no application deadline. Applications will be considered for funding based upon the availability of funds. For current funding levels, please visit the Land Acquisition Revolving Loan Program website here:

<https://www.oregon.gov/ohcs/development/Pages/land-acquisition-revolving-loan.aspx>

All LAP applications require a Procorem Workcenter, as the application checklist is built into Procorem's Tasks screen.

Requesting a Procorem WorkCenter

Both Homeownership and Affordable Rental Housing LAP Applicants will need to request credentials for a Procorem Workcenter via the Land Acquisition Program Intake Form here:

<https://app.smartsheet.com/b/form/688101a72afd44639e43185d3f1fafa1>

All Procorem Workcenter requests require a fully executed purchase & sales agreement or other agreement to purchase the property to be uploaded via the Intake Form.

Submitting Application Materials

Once Procorem credentials are received, go to the Procorem login page:

<https://app.procorem.com/login> and review the Tasks screen. These tasks are the formal application checklist. Once documentation has been uploaded to fulfill a specific task, the applicant should mark that task as 'Finished' to notify OHCS staff all items are available for review.

Please note: Applications can only be submitted electronically through Procorem Workcenters. Hard copies, faxes, and digital/electronic materials not submitted through Procorem will be automatically rejected and will not be reviewed, considered for funding, or returned to applicant.

Initiating OHCS Application Review

OHCS staff will begin review of submitted LAP application materials upon receipt of the \$500 application fee and confirmation of any required Affordable Rental Housing registry submittals.

Application Fee Payment

After receiving access to a Procorem Workcenter, please mail the Application Charge Form found in the Workcenter with the LAP application fee of \$500 in the form of a check or money order to :

Oregon Housing & Community Services
Attn: Finance – LAP Application # <Provided by OHCS Staff>
725 Summer Street NE Suite B
Salem, Oregon 97301

- If the \$500 application fee is not received, the application will be considered non-responsive.
- If OHCS is unable to consider the application because there is not sufficient funding remaining in LAP to fund the application, the application fee will be returned to the applicant.
- Applications reviewed but not funded after application of tiebreaking rules will be charged an application fee. See Appendix A for information on tiebreaking.

OHCS Required Survey Submittals

All Land Acquisition Applicants are required to complete OHCS' Diversity Equity and Inclusion Registry. For more information, please visit www.oregon.gov/ohcs/DEI.

Affordable Rental Housing Applicants are also required to complete the Pre-Qualification Registry and the standard Intake Application before taking any loan recommendations for approval.



Helpful Hint: Applicants should upload a copy of the application check to their Procorem Workcenter when marking the Application Fee task as 'Finished'.

OHCS Approval Timelines

OHCS staff will review applications to ensure that they are complete after receiving the application check and being notified that all Tasks are complete in Procorem. OHCS may seek clarification from applicants and may conduct discussions and negotiations with applicants who submit applications found to be reasonably likely to qualify for an award. OHCS may also negotiate with applicants on award amounts, particularly in instances where OHCS is unable to fully finance a loan request.

Loan applications will be considered by the LAP Program Analyst and OHCS Finance Committee with final approval by the OHCS Executive Director. OHCS Finance Committee meets weekly, with recommendation materials due 3 business days before the meeting date.

Phased Projects

Phased projects are allowed subject to the LAP requirement that loans must be repaid in full within 8 years. **At OHCS' sole discretion**, phased projects may be granted a waiver to make loan repayment in accordance with the development plan (i.e. a two-phase project may be allowed to repay half the loan upon receiving the construction loan for phase one and the second half upon receiving the construction loan for phase two).

Applications which include multiple parcels or sites of property will be accepted and considered for funding by OHCS provided the parcels or sites are determined by OHCS to meet eligibility requirements and are incorporated within the organization's housing plan. OHCS may require individualized documentation for each site. Site-specific documentation may include, but is not limited to:

- Environmental Reviews to standards found in 24 CFR 50 and/or 58,
- site descriptions
- land appraisal
- development timelines

Application Evaluation Criteria

Project Proposal

The purpose of LAP is to provide a source of financing for the acquisition of land for future affordable housing development. As such, we understand that the proposed development is in the concept stage and will likely change over time. Based upon this premise, an applicant's development plan should be preliminary and reflect a concept rather than a final project.

Evaluation criteria will include, but not be limited to, the following:

- Evaluation of the site's suitability for affordable housing and facilities that provide services to support residents, including the site's:
 - access to transportation,
 - use of existing infrastructure,
 - proximity to necessary services and amenities, and
 - ability to contribute to healthy neighborhood or community development.
- Evidence of strong organizational and financial capacity of the applicant to develop the project, including a demonstrated track record of receiving anticipated construction and permanent takeout financing,
- Applicant's housing plan is well thought out and attainable,
- Urgency to acquire site to provide affordable housing,

- Leveraging other sources of acquisition funding, and
- Balancing need and geographic distribution.

OHCS Provided Application Materials

Affordable Housing Land Acquisition Revolving Loan Program - (LAP) Workbook

The LAP Workbook requests the following information on the various tabs:

- Project Input Tab
 - Project location information
- Development Team Tab
 - If a General Contractor, Management Agent, or Architect have not been finalized, that is acceptable for LAP.
- LAP Information Tab
 - OHCS Set-Aside Category (Regional, Culturally Specific Organization, & Rental/Homeownership)
 - Site Acquisition Financing Table
 - Sources & Uses Table
 - Development Schedule

Application Narratives

Development Team

Please identify each person or company involved with the project team and their respective roles. Include a detailed resume of your team's work experience and qualifications. Additionally, please include the personal resumes of key team members. This should be reflected on the Development Team Tab of the preapplication as well as in a narrative.

History and Mission of the Org./Description of Current Organization

Discuss the history and mission of the Organization. Provide information on the management team and Board of Directors. If the requesting entity is public, please describe the decision-making structure of the entity and provide information on the individual or team responsible for overseeing this process.

Organizational Development Experience

Describe the organization's previous experience in affordable housing development, including a comprehensive list of affordable housing projects with which it has been involved. Please include all relevant completed projects as well as current or on-going projects. The projects listed should illustrate the organization's experience with projects similar in scope and size to the project

proposed in this application and demonstrate the organization's track record with receiving relevant funding.

The list of projects should include the following:

- Name and location of project
- The organization's role in the project
- Description of project including type, size, scope, mix of affordability, special needs set-asides
- Sources of financing
- Date project started and completed construction and current status of the project

Site Description & Suitability of Site

Describe the features of this site that make it suitable for affordable housing and, if applicable, facilities that provide supportive services. Describe the site's location including:

- the site's access to transportation,
- use of existing infrastructure,
- proximity to necessary services and amenities, and
- the ability to contribute to a healthy neighborhood or community development plan.

Provide current site approved zoning documentation to confirm that the project conforms to current zoning requirements. If the project does not conform to current zoning requirements:

- provide evidence that zoning can be changed, and
- describe the process involved in making that change.

Site Acquisition Financing

Describe how the organization will leverage LAP funds to purchase the site using the site acquisition "Sources and Uses" table from the Workbook. Include all applicable closing costs, including title & escrow charges and OHCS LAP fees. If another lender will be providing additional financing, include a letter of interest/intent from them.

Proposed Development & Financing Plan / Proposed Repayment Timeline

Explain how the affordable housing project will be financed, including how and when the LAP loan will be repaid and a timeline for securing all funds. The proposed development plan should reflect the anticipated size and type of the housing project, including a description of any other facilities being considered, and whether the project will be rental or homeownership. Identify the affordability restriction that will be used to maintain the long-term affordability of the project (minimum 30 years). Describe any foreseeable issues that may disrupt the timeline.

Additional Due Diligence Items

Financial Capacity

Attach the organization's past two years of audited financial statements and provide the year-to-date interim financial statements.

Site Control

Provide evidence of site control documented by an option to purchase or a purchase and sale agreement.

Initial Valuation of the Land

Applicants are required to submit a sales agreement supported by tax assessment documentation or a broker opinion with the application to indicate preliminary loan to value compliance. Variances between the sales agreement and the supporting documentation should include a written explanation. Appraisals will be required to determine the final loan-to-value compliance prior to loan closing.

Preliminary Commitment for Title Insurance

LAP loans require an ALTA extended lender's title policy.

Pre-Closing Requirements

After receiving loan approval from the Finance Committee, OHCS staff will issue a Reservation and Conditions Letter (RCL) for the project to the applicant. RCL attachments can be found on OHCS' website here: <https://www.oregon.gov/ohcs/development/Pages/nofa-reservation-letter-attachments.aspx>

Third Party Reports

Environmental Assessment

A Phase 1 Environmental Site Assessment is required prior to closing. It must be dated no earlier than 12 months prior to the LAP application date.

Land Appraisals

LAP Appraisals must be performed by a State Certified General Appraiser (SCGA)³ and are required before closing. The Oregon Appraisal Certification and Licensure Board has a searchable database to identify a SCGA accessed through

³ A State Certified General Appraiser is authorized to perform appraisals for all types of real property. See OAR 161-025-0000 for more information.

the following link:

<https://public.oregon.gov/ACLBPublic/LPRBrowser.aspx>

If the expected land value will be less than \$500,000, a State Certified Residential Appraiser (SCRA)⁴ can perform the appraisal, however a written request for an exception must be made to OHCS prior to the appraisal being performed. The request must be detailed and complete including an explanation as to why a SCGA cannot be utilized. Exceptions will be granted in writing at the sole discretion of OHCS.

All costs associated with the appraisal will be the responsibility of the applicant. OHCS reserves the right to request a second appraisal at the applicant's expense. All appraisals must be completed by a third-party having no "identity of interest" with the applicant.

Proof of Property/Liability Insurance

OHCS requires proof of Property/Liability insurance of not less than \$1,000,000 with OHCS listed as an additional insured at time of closing. OHCS shall receive a Certificate of Insurance at least annually while the LAP loan is in place. Changes at any time shall result in an updated Certificate of Insurance.

⁴ A State Certified Residential Appraiser can only appraise non-residential real property with a transaction value of less than \$500,000. See OAR 161-025-0005 for more information.

Appendix A: Fund Oversubscription/Tiebreakers

The intent of the LAP is to provide eligible organizations with a resource that may be used to acquire real property when it becomes available to be used for the development of affordable housing. To that end, LAP is a first come, first served program with application approval based on merit rather than a competitive scoring process. If, however, application approval would result in one or more LAP financing funds being oversubscribed, a tiebreaker system has been established.

In the event of the oversubscription of a fund, the following progression (in the listed order) will be applied to determine funding:

1. OHCS will provide loan funds to the applicant's loan request for property located in the census tract with the highest current percentage of severely rent burdened families (on a census tract level). Housing need levels will be compared to the first whole number.
2. If the tie is not broken from use of subsection 1 above, OHCS will provide loan funds to the applicant's loan request with the lowest loan-to-value percentage (based upon the preliminary value documentation accepted at application).

This tiebreaker system will be applied to same-day multiple applications within each individual set aside.

Appendix B: Failure to Meet Terms:

If the LAP loan recipient does not place affordable housing into service on the property acquired through LAP within the eight-year loan term, or if the borrower fails to use the property in a way that is consistent with the original affordable housing development plan, or if the borrower does not abide by the terms of their agreement or this policy, then the borrower will be required to repay OHCS the principal of the original LAP loan plus compounded interest calculated at the “current market rate”. “Current market rate” is defined as the ten (10) year constant treasury maturity year rate, as determined at the time the individual loan is closed upon, plus 2.5%.

OHCS may authorize LAP funded property to be sold or assigned prior to development. In all cases, OHCS will require, at a minimum, full repayment of the LAP loan at sale or at assignment.

Assignments may be made to related parties only if all of the requirements associated with the LAP loan will be attached to the assignment, including timeframes and affordability restrictions. Related parties are defined as an affiliate, subordinate, disregarded entity⁵, or any entity controlling or controlled by the purchasing entity including but not limited to a Partnership or Limited Liability Company where the borrower or its affiliate is the general partner or managing member.

In the event of a property sale, OHCS will be reimbursed the full LAP loan value regardless of sale proceeds. Generally, property sales will fall into two categories:

- 1. A sale retaining LAP requirements** – under this scenario, OHCS must approve the sale and its terms. Any net proceeds* will be split equally by the seller and OHCS. Any loan inequities caused by market changes must be negotiated between the buyer and seller as all OHCS loan terms, including but not limited to, loan amount, affordability and timeframes will remain the same and be transferred to the buyer. No penalties will be enforced though this type of sale.
- 2. A sale abandoning LAP requirements** – under this scenario, the loan recipient is responsible for repayment of the entire LAP loan including penalties (i.e., interest at current market rate) regardless of the terms of the property sale. Any net proceeds will be split equally between the seller and OHCS.

*Net Proceeds are defined as profits made by the LAP loan recipient after all costs associated with the sale of the restricted property to a third party are factored in. General holding costs

⁵ “Disregarded entity” means an entity that is disregarded by the Internal Revenue Service for tax purposes.

affiliated with the LAP loan, including, but not limited to, penalties and costs associated with property maintenance, taxes, etc. are not factored into this formula.

Repayment of all amounts owed to OHCS, including the principal of the LAP loan and any applicable interest rate, must be made upon demand or under terms determined by OHCS following the determination that the borrower has not met program requirements.