

Oregon Housing and Community Services

LAP Manual

The Affordable Housing Land Acquisition Revolving Loan Program (LAP)

Program Description and Application Guidelines

Second Edition
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1. PROGRAM DESCRIPTION

A. Purpose

The purpose of the Affordable Housing Land Acquisition Revolving Loan Program (“LAP”) is to assist eligible organizations in Oregon to purchase land suited for affordable housing development (see OAR chapter 813, division 037). Eligible organizations include the following:

1. Local governments
2. Local housing authorities
3. Nonprofit community or neighborhood based organizations
4. Federally recognized Indian tribes in Oregon
5. 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.

B. Revolving Loan Program

1. Funding Source Targets

The LAP is designed to be flexible in utilization allowing for specific funding sources to be targeted towards specific needs within the State. All funding sources will be utilized in a manner consistent with the Targeted Fund criteria (see Section B.2 below).

A. Funding Source Target Criteria: Initial Allocation Source “Rural”

The LAP was created with \$2.5 million in re-purposed funds. This specific source of funds has been targeted by Oregon Housing & Community Services (“OHCS”) for rural areas of the State of Oregon. Rural areas are defined as:

- a. Oregon communities with population of 15,000 or less within counties that are considered Metropolitan Statistical Areas (“MSA”) and outside of the Portland Urban Growth Boundary (see subsection (b) below). MSA Counties include Benton, Clackamas, Columbia, Deschutes, Jackson, Marion, Multnomah, Polk, Washington, and Yamhill
- b. All Oregon communities within the Portland Urban Growth Boundary are considered urban and not considered rural regardless of size.
- c. Communities with population of 40,000 or less in the balance of the State (not defined in subsections (a) or (b) above).

Note: A community may be considered rural if it had been under the population threshold within the past 3 years of published data, and if their current population is within 5 percentage points of eligibility.

2. Targeted Funds

OHCS is charged with administration of this program and has developed program regulations designed to fulfill the intent of the Legislative action creating the LAP.

Legislative requirements include funding targets for eligible organizations operating homeownership programs and rental housing for households with income less than or equal to 80% of the HUD area median income (“low income households”). Funding targets are as follows:

1. 40% of funds for homeownership for low income households
2. 60% of funds to organizations operating affordable rental housing for low income households

a. Homeownership Set Aside Fund

40% of new LAP funding allocations will be set aside for eligible organizations operating homeownership programs (the “Home Ownership Set Aside Fund”). If the new LAP Home Ownership Set Aside Fund allocation is not fully utilized by a funding source target area after a six (6) month period, the Homeownership Set Aside Fund allocation may be accessed by both targeted and non-targeted funding source target areas.

Homeownership Set Aside Fund allocations that have not been utilized fully within a 12 month period will be transferred to the General LAP Fund which may be accessed by any* eligible organizations operating affordable rental housing or homeownership programs for low income Oregonians unless further restricted by the specified funding source target.

All new and newly recycled funding allocations will be subject to the timing provisions outlined in the Homeownership Set Aside Fund.

**Because this is not considered a new allocation, unused Home Ownership Set Aside Fund allocations made available to affordable rental housing may be used by targeted and non-targeted funding source areas.*

b. Affordable Rental Housing Fund

60% of new LAP funding allocations will be made available to eligible organizations operating affordable rental housing for low income Oregonians (the “Affordable Rental Housing Fund”). New Affordable Rental Housing Fund allocations will be made exclusively available to areas identified in the funding source target. If the new LAP affordable rental housing allocation is not fully utilized by funding source targets after a twelve (12) month period, the loan funding allocation is open and not limited to the funding source targets.

All new and newly recycled funding allocations will be subject to these timing provisions.

c. General LAP Fund

Funding not utilized after 12 months in the Homeownership Set Aside Fund will be transferred to the General LAP Fund and may be used by any eligible organization for any eligible purpose (i.e. General LAP Fund may be used to supplement applications for either the Homeownership Set Aside Fund or the Affordable Rental Housing Fund).

3. Threshold Requirements

Upon program funding availability, the Homeownership Set Aside Fund and the Affordable Rental Housing Fund will be utilized to fulfill approved LAP loan application requests until such time that the individual fund balance plus 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 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.*

4. Affordability Restrictions

All housing developed on the property acquired under LAP shall be preserved as affordable housing for a minimum of 30 years. The affordability restrictions shall be documented through documents acceptable to OHCS including, but not limited to, restrictive covenants, recorded at the applicant’s expense against the property receiving LAP funding. The restrictive covenants will provide for, but are not limited to, income and rent restrictions. OHCS may utilize state *Land Acquisition Program Manual, Oregon Housing & Community Services, Version 2, March 2019*

funding for the purpose of making loans to eligible organizations with approvable plans to purchase land. Land use is restricted to the development of affordable housing meeting funding target criteria and to build facilities intended to provide supportive services to affordable housing residents and low income households in the nearby community.

5. Diversity, Equity and Inclusionary (DEI) Agreement

Consistent with OHCS' goal to achieve equitable outcomes, OHCS will require that all applicants sign a DEI agreement which must be submitted as part of the LAP application. Applications that do not include a signed DEI agreement meeting OHCS requirements will not be considered for funding. The DEI Agreement is available at: <https://www.oregon.gov/ohcs/Pages/multifamily-housing-land-acquisition.aspx>

6. Other LAP Criteria and Requirements

- A. Purchase Sale Agreements:** Property already purchased or donated does not qualify for LAP loans. Any cost reimbursement agreements are not eligible for LAP financing. OHCS will not approve any applications with option agreements or purchase sale agreements signed prior to the date of the public program opening announcement or 10 business days prior to funding allocation application acceptance, whichever is longest.
- B. 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 where the purchaser and seller are related, connected and/or affiliated through a business, personal, or financial relationship.
- C. Use of Purchased Property:** OHCS resources are only available to purchase property exclusively for providing affordable housing or providing 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 will be limited to acquisition for the purpose of new construction. Property designated for renovation is not eligible. Exceptions may be allowed for incidental buildings on a case by case basis (i.e., a maintenance or storage shed). Applications with buildings to be demolished are acceptable under the LAP.
- D. Phased Projects:** Phased projects are allowable but 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).

- E. Applicability of Program Restrictions:** Program restrictions are applicable to all property purchased using LAP resources. Consideration may be given to address boundary lines as determined appropriate for the specific needs of the property. This includes but is not limited to selling unnecessary property. In such event, any realized gain from unnecessary property disposal will be split by the developer and OHCS.
- F. Application Deadlines:** LAP is a rolling loan program with no application deadline. Applications will be accepted and projects considered for funding based upon the availability of funds. The intent of the program is to respond quickly to the potential 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.
- G. Loan to Value:** There is no maximum loan amount on LAP loans, but LAP loans will not exceed 90% loan to appraised value. Property purchased below fair market value may result in 100% financing as long as it still meets the 90% loan to appraised value criteria. Strong consideration will be given to applications that propose leveraging LAP funds in a way that maximizes the use of other financing sources. 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 final loan to value compliance prior to loan closing (see Section 2 “Application Process”).
- H. Property Re-Sale:** In the event that a sale of the purchased property is warranted to repay the LAP loan, any financial gap between the sale price and the amount owed to OHCS is the responsibility of the applicant.
- I. Loan Terms:** LAP loans have a 1% simple interest rate with a 1% loan fee and 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 utilizing the proceeds of construction financing for loan settlement. Loan repayments will be recycled to finance future transactions. **Receipt of an LAP loan does not grant the loan recipient any guarantee or preference for any other OHCS financing product.**

- J. 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 may be found on the OHCS website at: <https://www.oregon.gov/ohcs/Pages/multifamily-housing-land-acquisition.aspx>

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.

- K. Failure to Meet Terms:** If the loan recipient does not place affordable housing into service on the property within the eight year period, or if the borrower fails to use the property in a way consistent with the original affordable housing development plan, or if the borrower does not abide by any 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 reimbursement of the LAP loan.

Assignments are allowable to related parties only if all requirements associated with the LAP will be attached to the assignment, including timeframes and affordability restrictions. Related parties are defined as an affiliate, subordinate, disregarded entity 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. Any costs affiliated with the LAP loan including penalties and cost associated with property maintenance, taxes, etc. during the land holding period are not factored into this formula.

Repayment of any amount 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.

- L. **Loan Security Position:** OHCS will utilize the purchased property to secure the LAP loan. OHCS shall be in the first lien position of all property loan documents.

For additional information, see OAR chapter 813, division 037.

2. APPLICATION PROCESS

Please submit one hard paper copy and one electronic copy (on a thumb, jump or flash drive) of your complete application package to:

LAP Program Manager
Attn: LAP Application
Oregon Housing & Community Services
725 Summer Street NE Suite B
Salem, Oregon 97301

Applications must be clearly marked “Attn.: LAP Application” or it may not be considered. No facsimile (fax) or electronically transmitted applications will be accepted.

An application fee of \$500.00 in the form of a check or money order must accompany the LAP application or the application will be considered non-responsive. The application fee will be

returned to the applicant in the event that OHCS is unable to **consider** the application due to a lack of available funding. Applications not funded after application of tiebreaking rules are considered for funding and will be charged an application fee.

LAP applications are accepted on a rolling basis with no application deadline. Applications will be accepted and projects considered for funding based upon the availability of funds.

OHCS staff will review applications to ensure that they are complete. OHCS may seek clarification from applicants and may conduct discussions and negotiations with applicants who submit applications found to be reasonably likely to be selected 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.

Applications will be considered by the underwriting unit manager and OHCS Finance Committee with final approval by the OHCS Director.

Applications which include multiple parcels or sites of property will be accepted by OHCS provided the parcels or sites are determined by OHCS to meet eligibility requirements and are incorporated within the Eligible Organization's housing plan. OHCS may require individualized documentation for each site at OHCS' discretion. 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, etc.

Land Appraisals

OHCS will accept sales agreements supported by tax assessment documentation or broker opinions as preliminary land value proof at the time of application. Variances between the sales agreement and supporting documentation should include a written explanation. OHCS reserves the right to require a Land Appraisal prior to closing if OHCS staff does not believe that the sales agreement and/or supporting documentation properly reflect market conditions. Written explanations of variances will be taken into account. Appraisals must be performed by OHCS approved entities and are required at closing. A listing of approved appraisers can be found on the OHCS website. In the event that an appraisal cannot be performed by an OHCS approved vendor, a written request for an exception must be made to OHCS prior to the appraisal being performed by the unapproved source. The request must be detailed and complete including an explanation as to why an approved vendor 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. In this event the applicant will be notified of this determination. All appraisals must be completed by a third party having no "identity of interest" with the applicant.

Disclosure

OHCS reserves the right to retain all applications submitted.

Materials and information submitted 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 without prejudice to reject any and all applications and to negotiate acceptable applications with selected applicants.

3. EVALUATION CRITERIA

1. Evaluation Criteria

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

- Suitability of site for affordable housing and facilities that provide supportive services;
 - The suitability analysis will include consideration of 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;
- Organization's housing plan is well thought out and attainable;
- Urgency to acquire site in order to provide affordable housing;
- Leveraging of other sources of acquisition funding; and
- Balancing need and geographic distribution.

2. Fund Oversubscription/Tiebreakers

The intent of the LAP is to be reactive to eligible organizational demands as property that could be utilized for affordable housing becomes available on the market. To that end, LAP is a first come first serve program with criteria designed for approval of applications on its own merits as opposed to a competitive scoring process. However, in the event that multiple applications are received on the same day which 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 applicant loan funding:

1. Applicants that demonstrate their intention to affirmatively engage with culturally responsive organizations in the creation and development of the project. Eligible organizations must complete the “Engagement with Culturally Responsive Organizations” form in order to receive consideration for this tiebreaker, found here: <https://www.oregon.gov/ohcs/Pages/multifamily-housing-land-acquisition.aspx>
2. If a funding determination cannot be made from application of subsection 1 above, OHCS will provide loan funds to the applicant’s project request which is located in the census tract with the highest current “housing need”. “Housing need” is defined as the percentage of severely rent burdened families (on a census tract level). Housing need levels will be compared to the first whole number.
3. If a funding determination cannot be made from use of subsection 1 or 2 above, OHCS will provide loan funds to the applicant’s project with the lowest loan to value percentage (based upon the preliminary value documentation accepted at application).

4. APPLICATION PACKAGE

1. The Affordable Housing Land Acquisition Revolving Loan Program - (LAP) Request Form

Please fill out the application form attached at the end of this document.

Please use the LAP Checklist to verify that your application includes all the required documents.

Please include the following information in or as an attachment to your application form.

2. Qualifications/Experience

A. 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.

B. 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.

C. Organizational Development Experience

Describe your organizations previous experience in affordable housing development, including a comprehensive list of affordable housing projects with which you have been involved. Please include all relevant completed projects as well as current or on-going projects. The projects listed should illustrate your experience with projects similar in scope and size to the project proposed in this application and demonstrate your organization's track record with receiving relevant funding.

The list of projects should include the following:

- Name and location of project
- Your 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

D. Financial Capacity

Please attach your organization's past two years of audited financial statements. Please also provide your year-to-date interim financial statements.

3. 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 most likely change over time. Based upon this premise, your development plan should be preliminary and reflect a concept rather than a final project.

The following should be included in the application:

A. Project Narrative

1. Site Description: Identify a specific parcel of developable land that is suitable for development and is offered at a fair market value for the proposed use.

2. Suitability of Site: Describe the features of this site that make it suitable for affordable housing and/or facilities that provide supportive services? Describe the site's location including:

- (a) the site's access to transportation,
- (b) use of existing infrastructure,
- (c) proximity to necessary services and amenities, and
- (d) 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:

- (a) provide evidence that zoning can be changed and
- (b) describe the process involved in making that change.

3. Site Acquisition Financing: Describe how you will leverage LAP funds to purchase the site. Include a site acquisition "sources and uses" table.

4. Proposed Development Plan: The proposed development plan should reflect the anticipated size and type of project, including a description of any other facilities being considered, and whether the project will be rental or homeownership. Identify the mechanism that will be used to maintain the long-term affordability of project (minimum 30 years).

5. Proposed Timeline: Provide an estimated timeline for completion of the development and repayment of the LAP loan. Describe any foreseeable issues that may disrupt the timeline.

6. Proposed Financing Plan: Explain how the development of the project(s) into affordable housing will be financed, including how and when the LAP loan will be repaid and a timeline for securing all funds.

B. Site Control: Provide evidence of site control documented by an option to purchase or purchase and sale agreement.

C. Preliminary Commitment for Title Insurance

D. DEI Agreement

E. Documentation for tiebreaker one (optional)

F. Third Party Reports: Initial documentation to establish property value is required with the application. Acceptable documentation include a sales agreement supported by a

broker opinion letter or tax assessment documentation. A third party appraisal completed by an approved OHCS appraisal firm, a Phase I Environmental Site Assessment and proof of title insurance are all conditions of closing.

G. 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.

H. Additional Information: Any relevant information that would be helpful in evaluating your qualifications and/or the proposed development