



Oregon

Governor Kate Brown

Housing and Community Services

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The Honorable Senator Jackie Winters, Co-Chair
The Honorable Representative Carla Piluso, Co-Chair
Joint Ways and means Committee
900 Court Street NE, H-170
Salem, OR 97301

RE: SB 5515 – Increased Legal Support for Housing

Dear Co-Chairs Winters, Piluso and Members of the Committee:

Oregon Housing & Community Services (OHCS) has a close and necessary relationship with the Department of Justice (DOJ). Though the quality and abilities of our existing DOJ counsel are without question, Oregon's housing crisis has caused a tremendous increase in the work required of and produced at OHCS, which necessarily requires increased legal support. **We strongly support DOJ's request to the Legislature for additional staffing resulting in a minimum of two additional attorneys assigned to OHCS on a permanent basis.**

It is well documented that Oregon is in the midst of a housing crisis with additional programs, resources, oversight and outcomes expected of OHCS by the Legislature and the people of the great State of Oregon. OHCS is responding to this crisis with timely, effective and efficient use of these additional resources, however higher expectations, new programs, and increased attention to housing at all levels have understandably resulted in an explosion of work.

DOJ counsel provides an extraordinary amount of services to OHCS to accomplish delivering programs that account for hundreds of millions of public dollars each year. Without timely legal review of OHCS work, projects and initiatives can experience delays, which can be costly in addition to deteriorating public trust and our ability to meet expectations. To compound the issue, the multitude of programs, the complexities associated with the federal, state and local layering of resources, and the uniqueness of each development deal, require an attorney with experience in the development industry. These issues cannot be adequately addressed by a generalist in cases where the demand for work exceeds availability or in cases where there is a sickness, vacation or other work responsibilities.

To better understand the role of the DOJ in our agency, I am providing some primary examples of the work that the DOJ attorney currently provides to OHCS.

Real Estate Closing and Bond Transactions

DOJ counsel is intimately involved in OHCS bond transactions and real estate closings. These negotiations are time consuming, and require the coordination of multiple funder and sponsor entities. Any delays in legal review can result in substantial development delays that can be costly both in funds and perception. Specifically, the DOJ attorney must:

- Review all bond documents
- Participate in conference calls



- Review and approve Bond Counsel invoices
- Review and approving waiver requests in conduit revenue bond transactions
- Review construction closing documents
- Participating in underwriting calls necessary for a legal sufficiency review

The above tasks are required on each unique real estate transaction. OHCS' transaction volume has increased dramatically in the past two years. In one notable example, the multifamily tax exempt bond transactions volume has tripled on an annual basis. In 2016, we worked with DOJ to close four such transactions. In 2017, that increased to 12 transactions – tying our record for the most tax exempt bond transactions in a calendar year. In 2018, we project closing a record number – 15 transactions in all.

The volume increase is not limited to tax exempt multifamily housing deals. In 2017 OHCS reserved and closed funding for 50 projects representing over \$33 million in federal low income housing tax credits and nearly \$247 million in tax exempt conduit bond funding in addition to nearly \$59 million in other state resources. In 2018 OHCS closed and reserved 55 projects including a 10 tax exempt bond transactions.

In 2019, OHCS expects to close and reserve upwards of 20 projects and 20 tax exempt bond transactions totaling approximately \$303 million. These resources will include an increase in awards for the 9% LIHTC program, Article XI-Q bond funding for both affordable rental and homeownership activities, and state gap resources for new construction and preservation.

Residential Loan Program

DOJ counsel is also closely involved in our Oregon Bond Residential Loan Program, which includes the following duties:

- Provide certifications for all mortgage revenue bond issues
- Review and approve for single-family short sales
- Provide legal services (as needed) with respect to foreclosures, evictions, acquired properties, and loan servicing matters

In 2017 OHCS funded over \$133 million in single family loans; in 2018 we funded over \$254 million in single family loans, resulting in 1,130 new loans.

Funding Solicitations and Program Development

DOJ counsel provides critical review of the development of new programs and issuance of funding. This work entails in-depth knowledge about our programs and practices to ensure due diligence and proper oversight in administering millions of dollars in public resources. This work includes:

- Review of four or more multifamily Notices of Funding Availability (NOFA's) annually.
- Review of approximately four single family Requests for Proposals annually
- Review of all grant agreements.
- Assist with development of new or substantially altered programs including OAR reviews, program manuals, legal templates and other program documents

In recent years OHCS has implemented several new programs that require both Oregon Administrative Rulemaking (OAR) and solicitation development reviews from counsel as well as legal documents and grant agreements. Recent new programs include:

- LIFT Article XI-Q Rental and Homeownership development programs,
- Mental Health Housing program;
- Veterans single family rehabilitation program,
- Land Acquisition Program,
- State Home Oil Weatherization program,
- HB 2002 Preservation program, and
- Governor's Workforce Housing Pilots

Each of these requires significant legal oversight in developing program OARs, establishing corresponding program policy, developing solicitations, negotiating contracts, and creating new legal documentation. In addition, OHCS is working on a variety of technical studies and research efforts that require procurement of consultant services, including the Statewide Housing Plan, State Shelter Survey, Affordable Housing Cost Study, and more. Moving forward in 2019, the Governor's Housing Agenda includes a \$400 million budget that anticipates significant new programs and expansion of existing development resources.

Program Compliance and Asset Management


When OHCS provides funding and a property is built, compliance monitoring under the Asset Management section begins. The Asset Management section is responsible for verifying that all contractual agreements are upheld, including affordability, resident services, and maintenance reviews for an ever growing list of properties. DOJ provides support and affirmation to the daily challenges faced during enforcement of those agreements and program requirements. The deep knowledge and understanding of the unique considerations encountered when dealing with real estate law, fair housing law, and the many nuances of state and federal programs is invaluable to OHCS staff. DOJ services in this area include:

- Support for qualified contract language or enforcement including review of legal documents, templates, language and terms,
- Guidance and support to staff during litigation. Collaborating with other necessary resources such as DOJ Civil Enforcement Division,
- Guidance related to non-compliance and default, working with staff regarding notice, remedies and enforcement
- Guidance to staff negotiating transfers of ownership and other requests involving changes to original commitments or document language
- Assistance with developing and changing policy, and subsequent rulemaking
- Representation of OHCS during meetings or calls with other legal representatives

In the past 12 months, Asset Management and Compliance has requested DOJ assistance on 196 cases, including default notices, program and document changes, foreclosure notices, construction defect litigation, insurance liabilities, and rent requirements. Given our increased volume of transactions and expected new development resources, we expect this level of work will only continue to increase.

In summary, the unprecedented housing needs facing Oregon require bold investments and swift response. The Legislature is responding with historic resource and program investments, which OHCS is committed to implementing efficiently and effectively, but legal support is critical. Increased workload, the need for expertise in our field, and timely response are just a few of the justifications behind this request for a minimum of two additional staff positions at DOJ to support OHCS. Thank you for your serious consideration of the DOJ staffing request, we very much appreciate our relationship with the Department of Justice, and urge your support.

Sincerely,



Ryan Vogt, Chief Operating Officer
Oregon Housing & Community Services