

**RISK ASSESSMENT AND STRATEGY  
RECOMMENDATIONS TO PRESERVE  
OREGON'S LOW INCOME HOUSING  
TAX CREDIT (LIHTC) PROJECTS  
REACHING YEAR 15 FROM 2006 - 2011**

**May 1, 2006**

**Housing Development Center and the  
Year 15 Work Group**

*Project sponsored by Enterprise*

*With additional support from  
The National Equity Fund and the City of Portland's  
Bureau of Housing and Community Development*

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# **RISK ASSESSMENT & AND STRATEGY RECOMMENDATIONS REPORT**

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## **II. Introduction**

More than 6,500 affordable housing units across Oregon, financed through the Low Income Housing Tax Credit Program (LIHTC), will complete their initial 15-year compliance period (Compliance Period) between 2006 and 2011. As these projects reach this milestone, the project sponsors may seek to terminate LIHTC rent restrictions on these units and either sell the project or take the rents to market. Alternatively, both for and not-for-profit organizations may chose to preserve these units and continue serving low income Oregonians for another fifteen years. Across the country, both of these scenarios are occurring. It will take education, planning and financial resources to assure that as many of these units as possible continue to serve low income Oregonians.

The Housing Development Center, a not-for-profit development and asset management consultant, received sponsorship from Enterprise, with additional support from the National Equity Fund and the City of Portland, to initiate a statewide Work Group and research project in order to help move forward efforts in Oregon to preserve this portfolio.

The efforts of this Work Group have already influenced the State's Qualified Allocation Plan for LIHTC projects, the City of Portland's Preservation Agenda and have increased the awareness and knowledge of Year 15 Project Owners. More work will be needed to preserve these units. Many of the participants of the Work Group are now working together on next steps in this effort: planning for additional trainings and technical assistance on Year 15, advocacy for tenant notification, changes to State policies and procedures, and inclusion of preservation in affordable housing resource advocacy efforts.

This report provides three areas of information:

1. Information on the composition of the 97 Oregon projects (6,573 units) that will complete their Compliance Period over the next six years. A list of these projects, their location, sponsors and year of completion can be found on HDC's website, [hdc1.org](http://hdc1.org).
2. Evaluation of potential areas of risk within this portfolio, such as the intent of sponsor, for-profit ownership, insufficient reserves to address exit taxes or rehabilitation needs, and vulnerable populations. See attachments C of this report.
3. Recommendations from the LIHTC Work Group, based on national best practices, improved knowledge about the upcoming Year 15s from the survey, and their knowledge of resources and other factors within Oregon (Section VI of this report).

### **III. Brief Summary of LIHTC Program and the Year 15 Issue**

The Low Income Housing Tax Credit (LIHTC) program, created by Congress in 1986, has been instrumental in the creation of affordable rental housing. Within Oregon, the Oregon Housing and Community Services Department (“State”) administers the LIHTC program. The LIHTC Program has attracted significant private investment into affordable housing projects. The partnership (LP) or Limited Liability Corporation (LLC) ownership structures allow equity investors to receive the tax advantages of real estate ownership (including the LIHTC Credit and typical real estate losses), while providing substantial equity into projects, and giving the general partners or managing member the flexibility to manage the operation of the property. As a condition of receiving the LIHTC, the rents on the rental units in these projects are restricted through land covenants on the property.

Until 1989, project sponsors and investors were required to commit to a 15-year affordability restriction (Compliance Period). In 1989, the IRS extended the minimum income restriction period to 30 years (additional years after Compliance period referred to as the Extended Use Period). Even after this change, equity investors have been required to remain in ownership only during the initial fifteen year Compliance Period.

In the fourteenth year of the Compliance Period, the project owners may request that the State identify a purchaser for the property at a statutorily defined price, approximating fair market value (Qualified Contract Request). If the State cannot identify a purchaser at this defined price, the project is released from the further rent restrictions (Extended Use Period) and the project owner would then be free to sell the property or raise rents for new tenants. The State has recently issued Draft Qualified Contract Request Procedures (see the Oregon Housing and Community Services Website, [ohcs.oregon.gov](http://ohcs.oregon.gov)). To date, no owners in Oregon have applied through the Qualified Contract Request.

As the LIHTC program has matured and evolved, non-profit housing organizations have emerged as frequent sponsors and general/managing partners in these tax credit partnerships or LLCs. For non-profit sponsored projects that received LIHTC allocations after 1990, many of the partnership or membership agreements allow the general partner/managing members to purchase the property or the investor’s interest in the partnership through an option to purchase or right-of-first refusal. This is generally a beneficial price equal to the outstanding debt on the property plus any tax obligation of the investor partner/member. This right of first refusal is an important tool for preserving LIHTC units.

Throughout the country, state housing agencies, municipal governments and for and not-for-profit organizations are working on strategies to assure that project sponsors prepare transition plans for Year 15, and that resources are available to assist in this preservation effort. By the end of 2005, a limited number of projects across the country, and a handful of Oregon Projects had reached the end of their initial 15-year compliance period.

Nationally, some of the projects have already been lost from the affordable housing inventory; others are still in the process of negotiation for purchase.

In Oregon, a few non-profit sponsors have applied to the State for additional allocations of LIHTC, in order to preserve and rehabilitate these units and maintain long-term affordability, while others were able to acquire the properties with little or no additional public funds. Given the limited public funding available for affordable housing in the State, there is concern about how communities can preserve the more than 6,500 units across the State that will complete their Compliance Period between 2006 and 2011, while continuing to develop new affordable housing units to meet the growing need in Oregon.

Sadly, the challenge of preserving affordable housing nationally and in Oregon is broader than the LIHTC. At the same time as LIHTC funded projects begin to complete Year 15, local communities across the state, and particularly in rural communities, are facing the potential loss of affordability for housing funded by Rural Development and projects financed by HUD Section 8 programs with the State bond financing totaling more than 4,000 units statewide.

Many of the recommendations in this report, such as potential additional legislation or procedures for tenant notification and protection, technical assistance and training for property owners, and pursuing funding for preservation apply to preserving the expiring Section 8 projects and the Rural Development projects as well.

## **IV. Project Strategy and Process, Including Work Group Process, Research, and Next Steps**

The Housing Development Center (HDC), a not-for-profit affordable housing development and asset management consultant, initiated this LIHTC research and Work Group project in December 2005. This project has included three components:

1. **BEST PRACTICES REVIEW:** HDC completed a review of national best practices related to preservation of LIHTC projects beyond their initial Compliance Period. This included phone interviews, website research and review of published materials from both neighboring states and states with proactive LIHTC preservation programs. The “Best Practices Review” represents a sampling of policies, procedures, and funding strategies used by state and local governments, not a comprehensive list. (See Attachment B: Best Practices Review on the HDC website, [hdc1.org](http://hdc1.org))
2. **SURVEY OF PROJECTS COMPLETING THE COMPLIANCE PERIOD:** In December, 2005 through January, 2006, HDC conducted an electronic survey of Oregon LIHTC projects reaching the end of their Compliance Period before 2012. This survey focused on obtaining information on those project characteristics associated with increasing the risk of loss of affordability, based on HDC’s Best Practices Research. The survey that was administered (via “Survey Monkey”) to not-for-profit and for-profit sponsors of projects that the State had identified as potentially reaching Year 15 between 2006 and 2011 (based on placed in service dates). HDC culled the survey results to include only projects completing their Compliance Period from 2006 – 2011, based on the sponsors’ reporting of the first year they claimed tax credits on the project (See Attachment A: Survey Form).

HDC sent surveys to sponsors of more than 105 projects, and received 79 survey responses. Through survey results and follow up phone calls, 97 of these projects were identified as completing their Compliance Period from 2006 – 2011. HDC received survey responses on 69 of the 97 targeted projects. This survey response represents 71% of the targeted projects. Statewide, 88% of the non-profit sponsored projects, and 53% of the for-profit sponsored projects are represented in the survey results. (See Attachment C: Summary of Oregon Portfolio Years 2006-2011.)

3. **LIHTC WORK GROUP:** HDC convened a Work Group that consisted of staff from non-profit housing sponsors with Year 15 projects in the next six years, Oregon Housing and Community Services Department, Enterprise, National Equity Fund, Homestead Capital, Community Development Law Center, NOAH, AOCDO, Portland Development Commission and the City of Portland’s Bureau of Housing and Community Development. The purpose of the Work Group was to assess the risk of the loss of affordable units throughout the State due to LIHTC funded projects completing their Compliance Period and to make recommendations for strategies to mitigate this risk.

The LIHTC Work Group held three meetings. At the first meeting, members reviewed their understanding of the Year 15 issue to assure basic agreement on the issues, and gave feedback to HDC on the survey format and Work Group process. At the second meeting, HDC shared findings from both the Oregon projects survey and HDC's "best practices" research. At the final Work Group meeting, participants formulated draft recommendations for review and comment.

This final report concludes HDC's formal work on this project, although HDC will continue working on LIHTC Year 15 issues as a technical assistance provider, trainer, and participant in various policy groups.

## **V. Profile of Oregon Projects Completing their Compliance Period Between 2006 – 2011**

In general, the Year 15 Survey results were encouraging: seventy-seven percent of all respondents indicated that it was their intention to maintain current income and affordability restrictions. Perhaps the second most significant finding was that many respondents have not yet analyzed their projects to evaluate the risks and needs for their individual projects and to develop Year 15 Transition Plans. This lack of information by project sponsors was illustrated by their responses on questions regarding exit tax liability, reserves, and capital needs on their projects, with a high proportion of “don’t know” responses on these questions.

Some respondents did express concern about exit tax liability and lack of reserves to cover any cost for this liability. Many sponsors had not completed recent capital needs assessments and did not have capital improvement plans. There is risk associated with this lack of planning, since it takes time to develop exit strategies – as long as 3-5 years prior to the end of the initial compliance period. Without adequate time to plan and implement exit strategies, preserving these units may cause a significant stress on the organizations, funders and tenants.

### **A. Information on Attachments Summarizing Project Characteristics:**

The charts in Attachment C summarize information on two general types of project characteristics for Oregon’s 2006 – 2011 Year 15 portfolio:

1. Attachments C.1 – C.6 show the number of projects and units by project sponsor type (for or not-for-profit), number of tax credit units, and the year the project completes their Compliance Period. This information is summarized by both number of projects and number of units, since the average number of units per project is larger for for-profit sponsors than for non-profit sponsors (79 units compared to 57 units). This information is also shown statewide, and separately for projects located inside and outside of Multnomah County.
2. Attachments C.7 – C.10 present information on risk factors in the portfolio, showing in graph form much of the information summarized in Section B below.

### **B. Summary of Project Characteristics and Risk Factors:**

National research indicates that the following variables (in bold) are indicators of risk to maintaining affordability after the end of the Compliance Period, as well as pointing to risks to tenants for those projects that cannot be preserved:

- **Sponsors’ Motives:** The good news from this survey is that 77% of the respondents, both for-profit and not-for-profit, indicate that their goal is to maintain the current income and rent restrictions (affordability) after Year 15. Clearly, this is in part a factor of the market conditions and the current small

spread between restricted rents and market rents in many parts of the state. It may also be a factor of the involvement of the sponsor in the LIHTC program – those sponsors who continue to apply for new allocations of credits are clearly motivated to maintain their relationships with the State. Thirdly, there are both for and not-for-profits who have a double bottom line, which includes both financial return and public purpose, who are mission motivated to retain affordability.

Interestingly, on a national level there are project sponsors (including not-for-profit) seeking to exit LIHTC Extended Use Agreements because of the ongoing compliance requirements, even if they intend to retain the project's affordability. The State has recently drafted new compliance requirements for projects in their Extended Use Period, which reduce some of this reporting burden (see their website <http://www.ohcs.oregon.gov>)

- **For-profit sponsors (general partners/ managing members):** For-profits sponsor 57% of the units statewide, and represent a significantly higher portion of the units outside of Multnomah County, where they sponsor 70% of the units (see Attachments C.1 – C.3). While a portion of the for-profit sponsors responding to the survey indicated their interest in retaining affordability, it is not clear whether those for-profits are more involved with the LIHTC program, and potentially more inclined to retain affordability, than those who did not respond to the survey. Because of the higher rate of for-profit sponsorship outside of Multnomah County, there may be a higher risk of loss of Year 15 units outside of Multnomah County than within.
- **Tenant Income Levels:** National Best Practices encourage states to 1) prioritize preservation of those projects with the most vulnerable populations and the highest difference between market rents and project rents, and 2) to adopt local or statewide legislation that protects very low income and vulnerable tenants in cases where the projects cannot be preserved.

In the survey, HDC sought to identify both the project rent levels and actual tenant incomes in the projects. The initial review of the survey information indicated that more than 30% of the resident households have incomes below 30% MFI, and over two-thirds of the units are occupied by residents at or below 50% of the median income for their area. However, on further review and in discussions with the Work Group, we found that the survey questions may have been interpreted differently by different sponsors, making the results less reliable. We believe using other reporting strategies, (e.g. LIHTC compliance reporting to the State) may provide more accurate information on rents and tenant incomes.

- **Tax Credit Investor Policies:** Year 15 negotiations nationally have varied based on the different investors' rights within their original partnership documents, their interpretation of their fiduciary responsibility to their investors or company, and the actual tax and financial conditions of a particular investment pool or single investor. Therefore, evaluating who the investors are on Oregon's projects may provide some indication of risk for the portfolio.

The highest proportion of the equity investors in Oregon's projects over the next six years are non-profit syndicators. As we know from the participation of Enterprise, National Equity Fund and Homestead Capital in the Work Group, and from their work nationally, these syndicators are more likely, within the limits of their fiduciary responsibilities, to work with sponsors to maintain long-term affordability. Practices these syndicators are using to support preservation include waiving exit tax obligations, working with sponsors over years 11 – 15 to reduce or prevent exit tax obligations, and allowing reserves to be used for capital improvements.

Banks active in our local markets are also significant investors and may be constructive partners in structuring exit strategies. However, the approach to Year 15 is less known for the 44% of the projects having private investors, for-profit syndicators and for those projects with unidentified syndicators. Based on survey results, the investors on Oregon's projects are approximately as follows:

○ <i>Non-profit syndicators</i>	29%
○ <i>Banks</i>	27%
○ <i>Other syndicators</i>	19%
○ <i>Individual investors</i>	8%
○ <i>No response/don't know</i>	17%

- **Other Affordability Restrictions:** Projects with multiple funding restrictions are less likely to be able to sell properties for a fair market value or to raise rents. In evaluating other rent restrictions that might assure ongoing affordability, HDC found that for 51% of the Year 15 Projects, LIHTC or other State Funding represents the longest affordability restrictions. Rural Development funds restrict 16% of the projects, and for 10% of the reported projects, the Portland Development Commission (City of Portland) holds the longest restrictions.

Only 20% of the respondents indicated that they had received HOME funds, and another 10% said they did not know, meaning that as many as 70% of the units are not subject to HOME rent restrictions. At the same time, current HOME restrictions do not allow projects to use HOME a second time on a project without an extensive exception process. Therefore, the limited number of units in this portfolio that used HOME on their initial development means that HOME may be an important source of funding to preserve many of the Year 15 projects.

- **Right-of-First Refusal:** Forty-eight percent of the respondents indicated that their partnership agreements included a Right-of-First Refusal, which allows non-profit sponsors to purchase the property by assuming the existing debt and paying any tax obligation of the investor partner. Approximately 4% of respondents did not know. Therefore, it appears that most of the non-profit projects do have this option available to them.
- **Exit Tax Liability:** Sixteen percent of respondents indicated that they believe they will have an exit tax liability, but 22.2% of the respondents indicated that they do not know whether they have a liability or not (see Attachment C.7). Over 44% skipped this question, including for-profit sponsors for whom this question is not relevant. However, many not-for-profit sponsors also skipped this question, indicating that they do not know the status of their exit tax requirements. This represents another significant risk area, as for profit and individual investors may require not-for-profit project sponsors to pay exit taxes in order to purchase the property or partnership interest and retain the property.
- **Reserves Available:** Only 12.3% of respondents believe that their projects have adequate reserves to pay exit taxes, while close to 14% indicated that the projects do not have adequate reserves. Another 30% of respondents did not know whether there are adequate reserves (see Attachment C.8). This represents a significant unknown risk. Without individual analysis of each project, it is not possible to evaluate the level of reserves needed to cover exit taxes, transaction costs and rehabilitation needs.
- **Rehabilitation Needs:** Sponsors indicated that only 13% their projects are in need of extensive rehabilitation. Most (76%) respondents indicated they do not have significant rehab needs, with close to 10% of the respondents saying they did not know if their projects needed extensive rehabilitation. Given that 82% of the projects within the 2006-2011 portfolios were newly constructed when they were placed in service, this is a reasonable expectation, and probably indicates that the number of projects seeking re-syndication to complete rehabs will be small (see Attachment C.10).

However, over 55% of the projects do not have a recent capital needs assessment, and 15% of respondents did not know or did not respond to the question regarding capital needs assessment (see Attachment C.9).

## VI. Work Group Recommendations

The Work Group made recommendations based on their understanding of the portfolio, the Best Practices Research, their knowledge of resources available in the state, and their knowledge of other issues, such as other preservation needs and resource generation initiatives.

### A. Risk Assessment and Technical Assistance:

Work Group members agreed that the initial survey provides a good picture of where the portfolio and sponsors are in terms of their knowledge of Year 15 issues regarding the 2006-2011 portfolio. The group agreed that the survey was useful in terms of providing an overview, but at this point, any additional portfolio-wide risk assessments would be most productive if directed toward a particular outcome, such as support for funding initiatives or legislation related to tenant protections. The group also concluded that any further risk assessments would need to be set within a local, political framework – since affordable housing may not always be considered a community asset in some districts.

Additional technical assistance and training will be needed on a project specific basis to help groups statewide to plan for and implement specific preservation strategies for their projects.

#### *Specific Recommendations*

Make the report of the Work Group widely available and accessible to sponsors and jurisdictions. Outreach strategies include:

- **HDC:** Post on HDC website. E-mail all survey participants with the recommendation that they advise their local jurisdiction of the expiration of the Year 15 compliance period and any issues that may arise (e.g. loss of affordability or funding needs. Include project location information in an attachment.
- **HUD:** Circulate to Oregon CDBG/HOME entitlement jurisdictions.
- **AOCDO:** Post on its website and advise members about preservation issues.
- **OHCS:** Regional Advisors to the Director (RADS) discuss with or circulate to the jurisdictions within their regions. Identify a preservation contact person with responsibility to coordinate and stay abreast of preservation issues and challenges regarding the full range of housing projects at risk of loss: LIHTC, Project-based Section 8, Rural Development, manufactured home parks, and condominium conversions.
- **NPF:** Use HUD/NPF funds to make technical assistance training on preparing for Year 15 expiration available statewide.
- **OHCS/PDC:** Allow use of a capital needs assessment models that are both less expensive and more useful for planning.
- **All:** Encourage jurisdictions to initiate risk assessments and monitor capital needs assessments to better understand the potential risk and cost to preserve affordable housing.

## **B. Qualified Allocation Plan (QAP):**

The Work Group supported inclusion of Year 15 Projects as eligible for the State preservation “Set Aside”, which would allow Year 15 projects to compete for 9% LIHTC’s twice a year as well as qualify under the statewide set aside. The Work Group participants had a range of opinions on the both prioritizing projects within the set aside – with some advocating for more objective scoring criteria and others believing that the criteria needed to be more subjective, to allow the State to evaluate projects on their merits and on local market conditions.

The Work Group was sympathetic to the competing demands and priorities for the tax credits, and encouraged the State to explore further the strategy of leveraging or “burning” Bond Volume Cap, a preservation strategy for both LIHTC and other preservation projects being used extensively nationally. Because the group was not familiar enough with this strategy, the ir recommendation was for evaluation of this strategy, rather that a recommendation that the State adopt the strategy at this point.

Because both the number and types of projects reaching the end of their Compliance Period varies year varies year to year, there was support for someone (the State, AOCD) monitoring of the demand for tax credits by Year 15 LIHTC projects, potentially by contacting sponsors in advance regarding their Year 15 Transition Plans. There was also discussion about the timing of LIHTC Year 15 projects applying for credits. It was clear that more discussion is needed on the allocation of credits and timing of credit allocation issues, due to technical issues related to the timing of exiting the partnerships and meeting new 10% carryover requirements.

### ***Specific Recommendations to OHCS***

- Retain the 25% set-aside for preservation and monitor the demand to assess its adequacy.
- Specifically allow expiring LIHTC projects to qualify for preservation credits even if they do not have PBA (this has been included in the 2007 Draft QAP).
- Evaluate projects based on the following factors:
  - Physical condition/ location of the project: *How good a physical asset is the property, how valuable is having a project in that specific location, and how easily/ cost effectively could the project be replaced?*
  - Market conditions: *How much below market are the restricted rents on the project, how much supply of housing is there in the area at the restricted rent level compared to market need?*
  - Rent Subsidies: *Are there federal rent subsidies that would be lost if the project was lost?*
  - Ownership issues regarding compliance: *Is the project sponsor someone who will likely continue to meet compliance requirements based on past performance?*
  - Tenant population: *How vulnerable is this population? What are their incomes, rent burden, risks if displaced – including their ability to relocate successfully and be successful in other available housing?*

- Clarify technical issue regarding timing of the application and status of “borrower”.
- Create a list of potential purchasers to notify when a request for a qualified contract is received.

Qualified Contract Process Update: OHCS has issued a draft process for project owners that want the State to identify a purchaser through the Qualified Contract Purchase. See the Oregon Housing and Community Services website (<http://www.ohcs.oregon.gov>).

### **C. Tenant Notification:**

The Work Group identified notification as one issue that cuts across a preservation types and original funding sources - HUD, Rural Development, and LIHTC – and as such would best be addressed comprehensively. While the Work Group would support the preservation as many affordable housing units as possible (or as make sense based on the factors above), they recognize the financial challenges this presents. Absent the preservation of units, the Work Group encourages notification the protection of tenants by giving adequate notification of pending sale, by facilitating the transfer of projects to an entity committed to ongoing affordability, or by providing relocation assistance if necessary.

Projects funded by OHCS, HUD, and Rural Development have different notification requirements, and provide different levels of protection for tenants. There is no single agency assigned responsibility for notification, which can be confusing for funders, sponsors, advocacy organizations, and tenants. There are still unanswered questions in the area of notification, but there was consensus that a web-based clearinghouse similar to Minnesota’s best practice would address some of the concerns.

Because of their statewide influence and legislative and advocacy agendas, AOCDO, the Community Alliance for Tenants and the Housing Alliance may be best positioned to address the issue of tenant notification. However, these groups will be meeting to outline strategies as none of them currently has the capacity to take on this issue without partners and additional support.

#### ***Specific Recommendations:***

- **AOCDO:** Convene meeting of funders (OHCS, HUD, RD), sponsors, and tenants’ rights organizations to further define notification challenge and potential solutions.
- **OHCS:** Investigate the possibility of hosting a web-based clearinghouse where sellers could provide notice of interest to sell and potential buyers could register to receive notice. (Similar to the “Opt-Out Log” maintained by State of Minnesota ([www.mhfa.state.mn.us](http://www.mhfa.state.mn.us)))
- **HDC:** Share LIHTC contact list with other non-profit organizations who may be interested in purchasing Year 15 Projects.

## **D. Funding:**

There is a need for additional funding at both the State and local level to preserve the existing affordable housing while continuing to expand the supply of affordable housing with new projects. Using a format borrowed from other states, we have included a chart that shows rough estimates of potential overall preservation costs for this portfolio, based on percentage of units that need funding and a range of needed funding per unit (see Attachment D: Funding Levels to Preserve Units).

Based on other states' data, preserving all of the expiring Year 15 units over the next six years would cost between \$66 million and \$263 million, depending on the level of rehabilitation needed to preserve the units. Because most of these projects were new at their placed in service date and do not have extensive rehabilitation needs (according to 76% of the survey respondents), in addition to the high participation from non-profit syndicators, it is possible that Oregon's costs could be in the lower ranges shown on Attachment D. Regardless of the funding available, the preservation of the expiring units will require creative approaches.

### **Specific Recommendations:**

- **Housing Alliance:** Include preservation of existing affordable housing in the Housing Alliance agenda. Encourage the State to apply the criteria outline in Section C above as the criterion for making funding decisions regarding preservation, including Year 15 projects.
- **OHCS:** Investigate a policy change for projects that leverage (or burn) Tax Exempt Bond volume cap to access non-competitive LIHTC as a means of preservation, while allowing partial pay-downs of bonds as a means to keep rents low. (This strategy has been employed effectively by other states to preserve projects, including LIHTC).
- **OHCS/PDC/and local jurisdictions:** Encourage owners to evaluate capital needs, exit tax obligations and Year 15 Transition Plans, and evaluate impact of Year 15 Projects across each jurisdictions portfolio to better understand the need and prioritize financial resources.
- **OHCS/HUD/PDC/and local jurisdictions:** Explore options and allocate funds to support technical assistance for organizations developing and implementing project preservation strategies.

## **E. Best Practices – Looking Forward:**

The more the Work Group learned about the issue of expiring tax credits, the more they realized that sponsors need to be thinking about their 15-year exit strategy well before Year 15, and in fact, should be planning for it as they develop their tax credit partnerships.

### ***Specific Recommendations To Non-Profit Sponsors***

#### **1. During Initial Negotiations on New Projects:**

- Request that potential investors outline their Year 15 terms during the investor selection process.
- Find out how potential investors are treating current Year 15 projects.
- Reach (written) agreements with investor about willingness to limit losses and avoid exit taxes as part of the initial agreement.
- Obtain copies of original financial projections (operating proforma fifteen year projections and the investor's calculations on Internal Rate of Return).
- Reach agreement with investors on use of reserves before/ at Year 15.

#### **2. During Compliance Period:**

- Know the project documents: terms of partnership, loan terms (including prepayment penalties, balloon payments), and OAHTC expirations.
- Monitor capital accounts and exit tax obligations (projecting to Year 15).
- Work with a tax accountant as necessary to limit exit taxes during Years 10 – 15.
- Complete periodic capital needs assessments, capital needs plans and monitor capital reserve balances. Reach agreement with investor on use of reserves before Year 15.
- Begin developing exit strategies no later than Year 11.

For more information, contact Molly Rogers at the Housing Development Center, [molly@hdc1.org](mailto:molly@hdc1.org) or (503) 335-3668.

**Attachment A**

**Risk Assessment of Oregon’s LIHTC Projects Expiring 2006-2011  
15 Year Expiring Tax Credit Survey<sup>1</sup> - Final Survey**

**Sponsor:** \_\_\_\_\_

**Contact:** \_\_\_\_\_

**Sponsor:** \_\_\_\_\_ **Not-for-Profit**      \_\_\_\_\_ **For-Profit**

**Project:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

Thank you for your help in providing the data that is essential to developing an understanding of the statewide issues and impacts related to Expiring Tax Credit projects. Your responses to this survey will provide important data so that sponsors, funders, policy makers, and investors can get a better idea of the possible impacts of expiring tax credit projects.

**Please complete this survey and return to Andrew@hdc1.org by January 11, 2006.**

**Thank you for your time and assistance! If you have questions contact Cathey Briggs, catbriggs2@yahoo.com.**

**Portfolio Risk Assessment:**

#	Question	Response	Comment:
1.	What is the expiration year (Year 15) of your partnership? [15 years from first year Tax Creditors taken on Investor’s K1]		
2.	How long do your project’s affordability restrictions remain in place?		

<sup>1</sup> Thanks to ESICS and NEF for the training materials from which these questions were gleaned.

#	Question	Response			Comment:	
3.	Which funding source holds longest term affordability restriction?					
4	How many units are subject to the longest affordability restrictions?					
5.	Did the project ever receive HOME funds?	Y	N	Don't Know		
5.a	If so, how many units are designated HOME units?					
6.	Who is the project's Tax Credit Investor?					
7.	Is your goal to maintain the current income and rent restrictions (affordability) of the units after Year 15?	Y	N	Don't Know		
8.	Are you considering the sale of your project at year 15 to other than GP/sponsor?	Y	N	Don't Know		
9.	Post 1990 partnership agreements with Not-for-Profit sponsors often contain a Right of First Refusal agreement that allow the General Partner to purchase the property for outstanding debt plus investors' exit tax liability.					
9.a.	If your are a Not-for-Profit, does your Partnership Agreement include a Right of First Refusal?	Y	N	Don't Know	N/A	
9.b.	Do you expect that there will be an exit tax liability at Year 15? [You have a tax liability if your capital account is negative (IRS form K-1, N)]	Y	N	Don't Know		
9.c.	Do you have adequate reserves to pay an exit tax ?	Y	N	Don't Know		

10.	Do you have a recent capital needs assessment for the project?	Y	N	Don't Know	
11.	Is the project in need of extensive rehabilitation?	Y	N	Don't Know	
12.	What are the <u>approximate</u> income levels of your current residents? (% households at or below %MFI)	<input type="text"/> % HH <30% MFI <input type="text"/> % HH 31-50% MFI <input type="text"/> % HH 51-60% MFI <input type="text"/> % HH >60% MFI			
13.	What are the maximum allowable rents for the project? (number of units @ % MFI)	<input type="text"/> (# units) <30% MFI <input type="text"/> (# units) 31-50% MFI <input type="text"/> (# units) 51-60% MFI <input type="text"/> (# units) >60% MFI			
14.	Are there deferred payments (deferred developers' fee, loan payments or interest on public debt) due at or immediately after Year 15?	Y	N	Don't Know	
15.	Does the project have any loan terms that would make the loans due on sale or transfer/ replacement of the limited partner requiring a refinance?	Y	N	Don't Know	
16.	Are rental subsidies expiring after Year 15?	Y	N	Don't Know	

**Attachment B**

**Expiring 15-Year Tax Credits:  
Best Practices Review  
Housing Development Center  
1/20/06**

**Best Practices by Category:**

**Risk Assessment:** Data and analysis to determine scope of problem & risk factors

<b>Jurisdiction</b>	<b>Summary:</b>
<i>California</i>	In 2001 California Housing Partnership completed the first extensive Risk Assessment of Expiring projects. Main risk factors: for profit general partners; lack of other affordability restrictions, local housing market conditions. What they found is that many of the earliest projects converted to market. With longer affordability restrictions and nonprofit tax abatements, there is more incentive to stay affordable.
<i>Washington</i>	Contracted with WA Low Income Housing Alliance in 2003 to do statewide risk assessment. Maintain extensive database on expiring tax credit projects (only a portion of the 88 fields are available on the web site.) All property records are on line, including loan documents.
<i>City of Seattle</i>	City of Seattle contracts annually with WA Low Income Housing Alliance to do a Tax Credit Assessment – original in 2004, and a 2005 Update. Developed risk methodology to identify and monitor high-risk buildings. General finding are that lack of other affordability restrictions is greatest risk. Buildings in need of major repairs, but in desirable area, could be sold even by mission driven non-profit in order to reinvest in affordable housing elsewhere.
<i>Wisconsin</i>	<i>Governor’s Task Force on Preservation Report:</i> risk factors evaluated included: 1) municipal support to allocate scarce resources; 2) housing replication – level of difficulty in replicating project elsewhere; 3) Housing Need and supply – evaluation of penetration and saturation rates; 4) loss of affordability – units serving households below 50% MFI considered high risk.

**QAP Policy: eligibility for preservation set aside/or other scoring criteria**

<b>Jurisdiction:</b>	<b>Summary</b>
<i>California</i>	No set-aside for preservation but a preferred funding method: use 4% credits with Multi-Family fund to equal equity from 9% credits. Because SRO's are not eligible for 4% credits, state revised statute defining "at risk" housing to include SROs, thereby making them statutorily eligible for 9% credits.
<i>Michigan</i>	30% preservation set aside of 9% credits – specifically allows expiring LIHTC projects to apply.
<i>Minnesota</i>	In scoring criteria, can earn 10 points for preservation of existing housing tax credit units that meet criteria including: units at risk of going to market rents where market rents of comparable units exceed the tax credit rent limits by 10% and proposed rents will increase by more than 30%. Risk of conversion must be supported by data. And tax credit units would no longer remain decent, safe, and affordable due to physical deterioration or deterioration of capacity of current ownership/management entity.
<i>Ohio</i>	Has a \$5 million set aside for preservation and specifically allows expiring LIHTC projects awarded between 87-94 that were completed and placed in service to apply.
<i>Washington</i>	No set-aside, but does awards points for preservation project– and allows LIHTC to apply.
<i>Wisconsin</i>	At 40% claims the largest preservation set aside in the country. Preservation is a high visibility issue because of Governor's Task Force. This is not so much a QAP policy, but a compliance issue – state will reduce reporting requirements for post-Year 15 projects that maintain affordability and meet explicit criteria.

**Notification Requirements:**

<b>Jurisdiction</b>	<b>Summary</b>
<i>California</i>	Recently issued a new report: <i>California Notice Provisions for At-Risk Properties: An Update for 2005</i> . Two notices to tenants are required: 12 month prior to termination or expiration of restriction, and 6 month. “Opportunity to make a Purchase Offer” Notice requirements – 12 month notice to state and all qualified entities (nonprofits, tenant organizations, public agencies, etc.) before termination to allow opportunity to make a purchase offer. State maintains a registry of qualified entities who will receive notice.
<i>Sacramento</i>	City Statute requires that owners notify tenants 12 months prior to anticipated prepayment, termination of subsidy contract, or termination of rental restrictions. During notice period city is given the right to negotiate for purchase and owner cannot do anything to prevent the negotiation.
<i>Illinois</i>	Illinois passed a Federally Subsidized Housing Preservation Act in 2004 that expanded the definition of subsidized housing to include LIHTC; requires 12 month notice; tenants have a right to purchase and can transfer that right to a non-profit or for-profit developer.
<i>Minnesota</i>	State requires notice 12-month notice to tenants and local jurisdiction. Also requires a tenant impact statement that is sent to jurisdiction. State maintains a web based log of expiring projects where owners have given notice.
<i>Washington</i>	Was the first state to develop Qualified Contract procedures, but has not been notified of intent to use. Other states are contacting Washington about using same procedures.

**Preservation Funds:**

<b>Jurisdiction</b>	<b>Summary</b>
<i>California</i>	Multi-Family Fund Combined with 4% credits.
<i>Minnesota</i>	Though not specifically for Preservation, Minnesota has a common application for Multifamily Rental housing applications to 8 city, county, state, and private foundation funds.
<i>New York City</i>	“New Housing Marketplace” – preservation initiative, Enterprise helped support.
<i>City of Seattle</i>	Seattle has access to housing levy funds, and housing trust funds.
<i>Wisconsin</i>	Saving Our Stock Preservation Fund (\$10M)
<i>MacArthur Foundation</i>	\$50 million initiative for Affordable Rental Housing Preservation.

**Policies and Practices Regarding Expiring Tax Credits By Jurisdiction**

<b>Jurisdiction/ Organization</b>	<b>Contact</b>	<b>Preservation Set Aside QAP</b>	<b>Other Regulatory</b>	<b>Comments:</b>
<b>California</b>	www.ncsha.org (organization of state housing finance agencies- has directory of all states with web addresses)	Because SRO's are not eligible for 4% credits, state statute was revised to define SRO's as "at-risk". This makes them eligible for 9% credits.	1) Statutory change to definition of at risk to cover SRO's 2) State Preservation Notice Law	1) Preferred method for funding is that expiring projects apply for 4% credits, combined with Multi-Family fund, to equal the amount that 9% equity would raise. Exception is SROs – they are eligible for 9%. 2) State notice law revised to include LIHTC projects as well as other projects with affordability requirements tied to density bonuses, parking variances, non-federal loans– some jurisdictions have their own requirements: SFO, Sacramento, LA's is pending. "If you can't save the unit, protect the tenant with notice."
<b>California Housing Partnership www.chpc.com</b>	Matt Schwartz, California Housing Partnership	NA	Advocate for regulatory and statutory changes.	CHP did the first risk assessment, 2001. Findings: Early For-profits likely to convert. Later risk small – for-profits have incentive to partner with non-profit because of property tax abatement benefits available only to non-profits.
<b>City of Sacramento www.shra.org</b>	Jerel Glasser	NA		Based on California notice laws, it specifically includes LIHTC. Requires 12-month notice to city and tenants. Gives city first right of purchase during the notice period
<b>Florida</b>	www.ncsha.org	No	Considering State Notification Law	Priority includes for developments that waive option to convert to market after year 14 and extend the set-aside beyond the required 30-year period.
<b>Illinois</b>	www.ncsha.org	\$2 million (includes refi's)	Federally Assisted Hsg Preservation Act	1) Preservation notice amended to include LIHTC – 12 month rather than 6-mo notice. Gives tenants ROFR. 2) Award if conversion to market is likely within 2-3 years, or others in need of substantial rehab.

<b>Jurisdiction/ Organization</b>	<b>Contact</b>	<b>Preservation Set Aside QAP</b>	<b>Other Regulatory</b>	<b>Comments:</b>
				3) State Donation Tax Credit - \$18 mil annually – thinking of this as source for preservation – to pay exit tax.
<b>Chicago Rehab Network</b>	Rachael Johnston	NA		1) CRN did Assessment of Tax Credit Portfolio, 2002 to counter problems – not specifically about expiration. 2) Non-profit Chicago Equity Fund did lots of early deals – wanted to convert to market – didn’t care about preservation. Nonprofits successful in buying LP’s interest with city’s support. 3) ESICS training with J. Brandenburg was hands on and very helpful to non-profits.
<b>Massachusetts</b>	www.ncsha.org	35%		Expiring use projects – does not specifically mention existing LIHTC, but does not exclude them.
<b>Michigan</b>	www.ncsha.org	30%		Specifically allows applications from expiring LIHTC projects within 2 yrs of loss of low-income restrictions – must maintain affordability for the longer of 15 years or length of mortgage.
<b>Minnesota</b>	Julie LaSota	No set aside, but a scoring preference for preservation	Notice requirement and tenant impact statement	1) Used to have preservation set-aside, now set-aside is for supportive housing. Instead uses scoring criteria – specifically for Preservation of existing LIHTC units 2) State maintains web log of “opt out” information from owners who give notice in accordance with notice requirements.
<b>New York City</b>				NYC implemented New Housing Marketplace to preserve housing. MacArthur Foundation funded preservation symposium. Enterprise a partner is preservation.

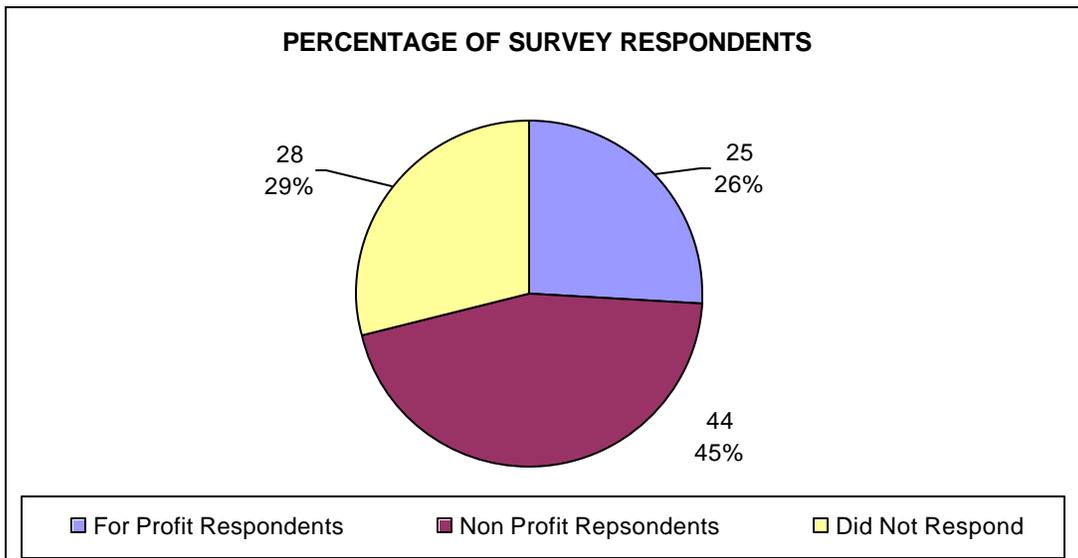
<b>Jurisdiction/ Organization North Carolina</b>	Contact www.ncsha.org	Preservation Set Aside QAP No	<b>Other Regulatory</b>	Comments:  Good bibliography on expiring LIHTC articles, as of July 2004.
<b>Ohio</b>	www.ncsha.org	\$5M		Among others - Specifies LIHTC projects awarded between '87-'94 that were completed and placed in service.
<b>Pennsylvania  Washington</b>	Susan Sellis  Tim Sovold	20%  No – awards 10 points for preservation to S8 or LIHTC projects within 5 yrs of losing affordability	Preservation Notice to tenants – 1 yr in advance	Existing LIHTC projects are eligible for set aside, but they are not seeing many apply yet. 1) State contracted with WLIHA to do risk assessment in 2003 – have QC procedure but not used yet. Is selective-tax credit rents are often market rents – scarce resource. Great database – 88 fields. All property records on line to verify ownership. 2) Just completed Post Year 15 Compliance Procedure 3) Notice requirement was already state law – no changes.
<b>City of Seattle</b>	Bill Runf, Seattle			1) City of Seattle contracts annually with WLIHA for risk assessment. 2) City has priority for funding expiring projects. Uses housing levy fund among others. 3) 3) Expiring LIHTC should compete on merits – restricted rents below market, low-income tenants. To date non-profits acquired with no public funds - \$20K-100K – transaction and legal fees – no exit taxes
<b>Washington Low Income Housing Alliance</b>	Shane Rock			Have done 3 assessments – 2003 for state, and 2004 and 2005 for City of Seattle. Developed risk methodology – identified high-risk buildings in Seattle to monitor.

<b>Jurisdiction/ Organization Wisconsin</b>	Contact  Sharon Rambett	Preservation Set Aside QAP 40% (increased from 35% last year due to demand – also S8)	<b>Other Regulatory</b>	<i>Comments:</i>  1) <i>Governor’s Task Force Report on Preservation</i> – risk assessment. State doing outreach to owners with projects within 3 years of expiration – does not want to lose units. LIHTC projects do not get tax abatement – a big issue for them now. 2) Will be posting post year 15 procedures soon
<b>Other:</b>				
<b>MacArthur Foundation</b>	Steve Richards, Grant Manager			Window of Opportunity: \$50 million, 10-year initiative to preserve affordable housing. Has funded PRIs, research, seminars etc. Usually they solicit proposals, but will accept unsolicited proposals.
<b>Fannie Mae Foundation</b>				Tonya is checking – MacArthur article said that FM pledged \$15 billion to preserve more than 300,000 units and will lend \$100 million to larger nonprofits to purchase and improve rental properties.

**Attachment C**

**15 Year Expiring Tax Credit Survey - Survey Findings**

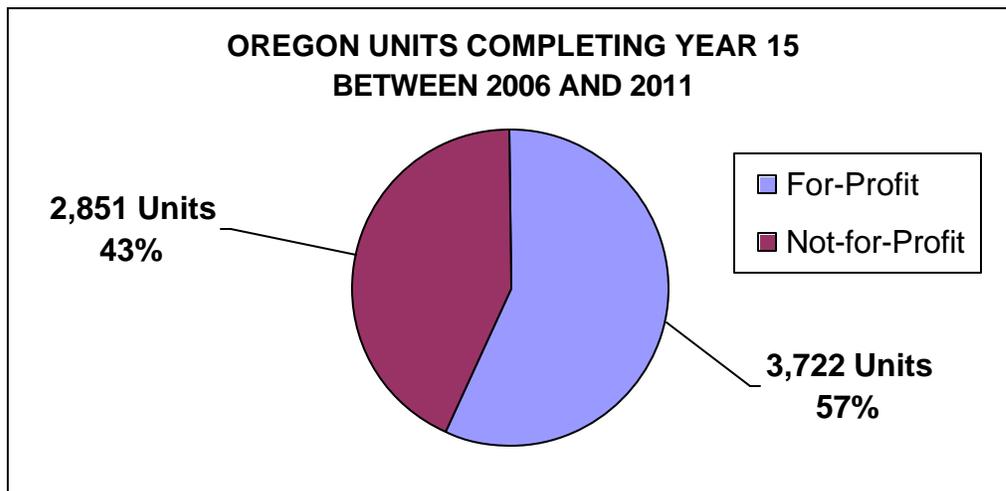
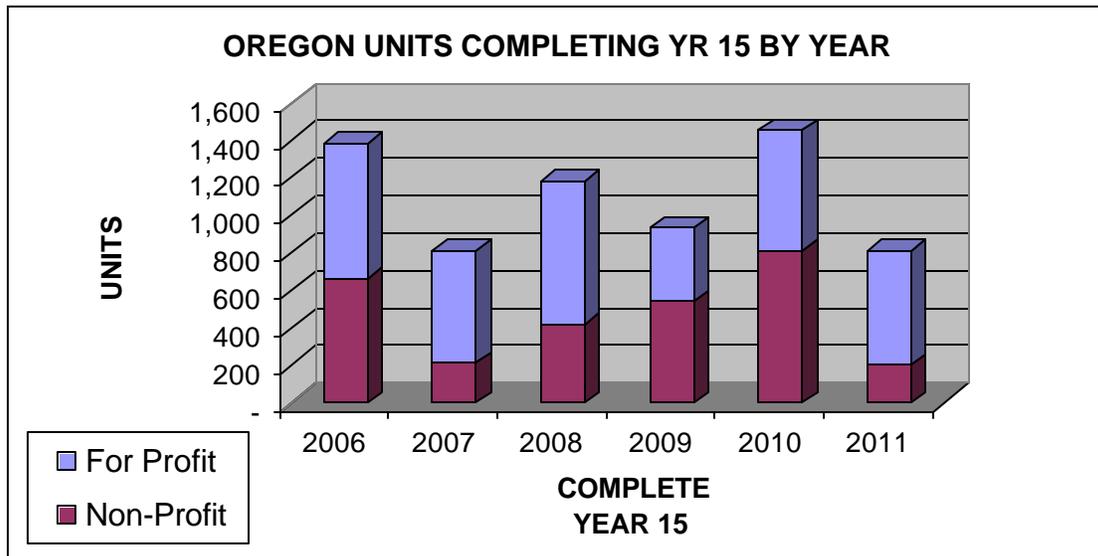
**Summary of Housing Development Center's LIHTC Year 15  
Survey Respondents  
(Number and Percent by Organization Type)**



**Attachment C.1**

**Summary of Oregon (statewide) Projects Reaching Year 15  
Between 2006 – 2011  
(Number of Units Reaching Year 15 by Year)**

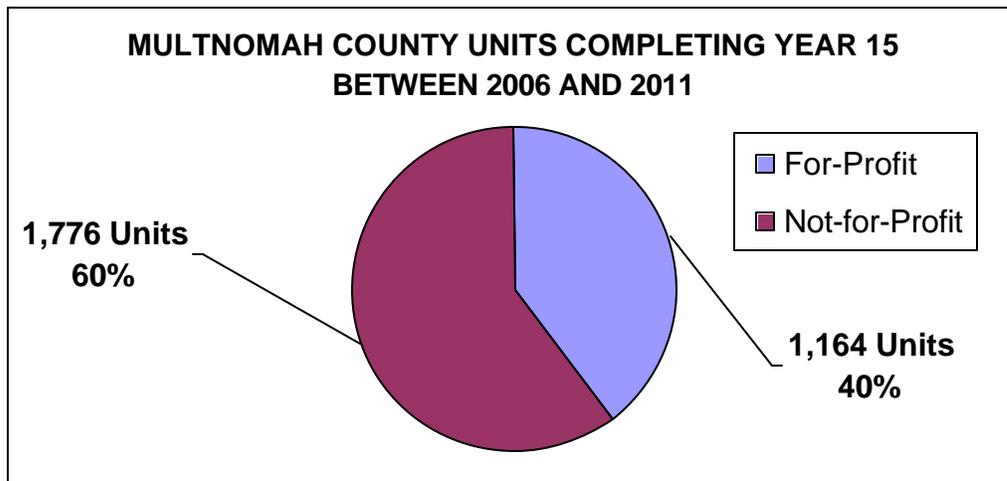
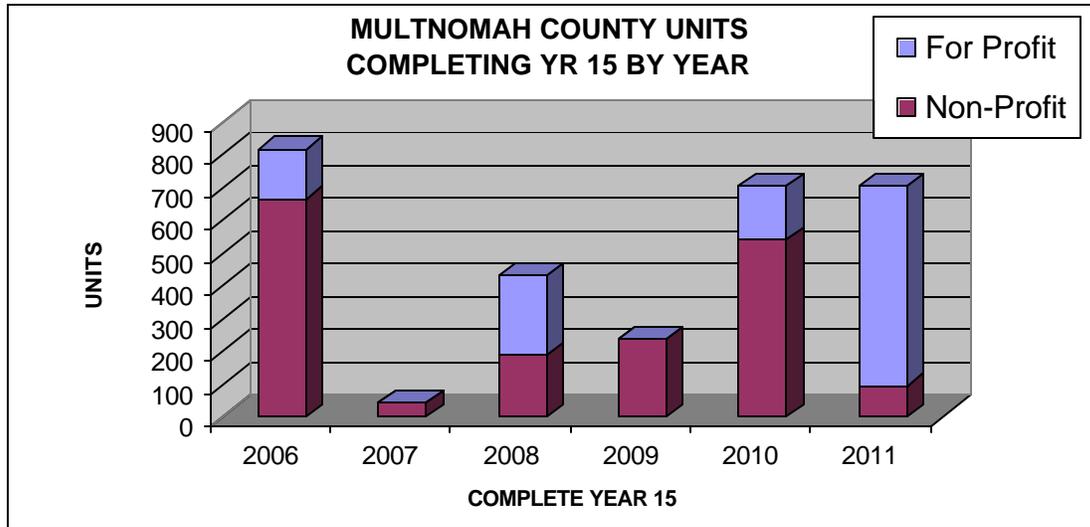
<b>STATE</b>			
	For Profit	Non-Profit	Total
2006	716	665	1381
2007	602	210	812
2008	759	421	1180
2009	394	540	934
2010	639	814	1453
2011	612	201	813
<b>Total</b>	<b>3,722</b>	<b>2,851</b>	<b>6,573</b>



**Attachment C.2**

**Summary of Multnomah County Projects Reaching Year 15  
Between 2006 – 2011  
(Number of Units Reaching Year 15 by Year)**

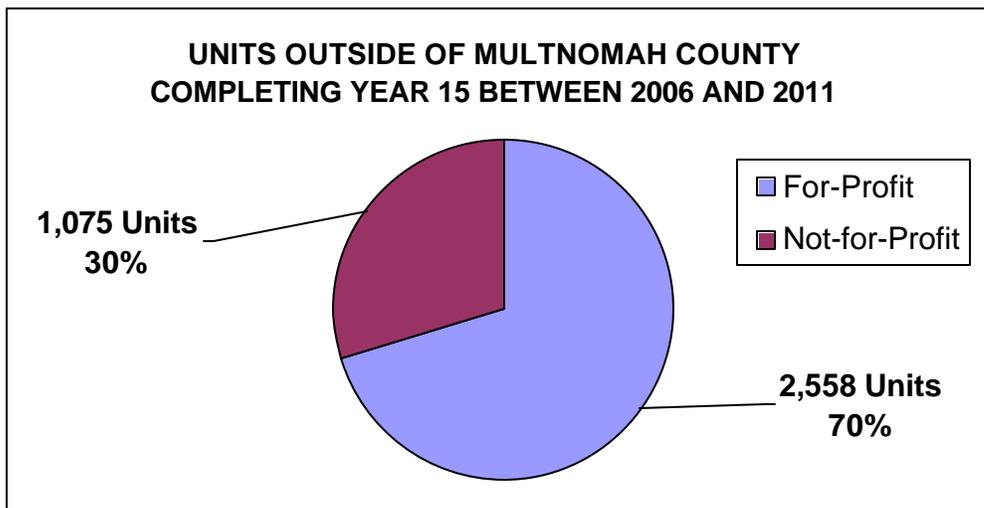
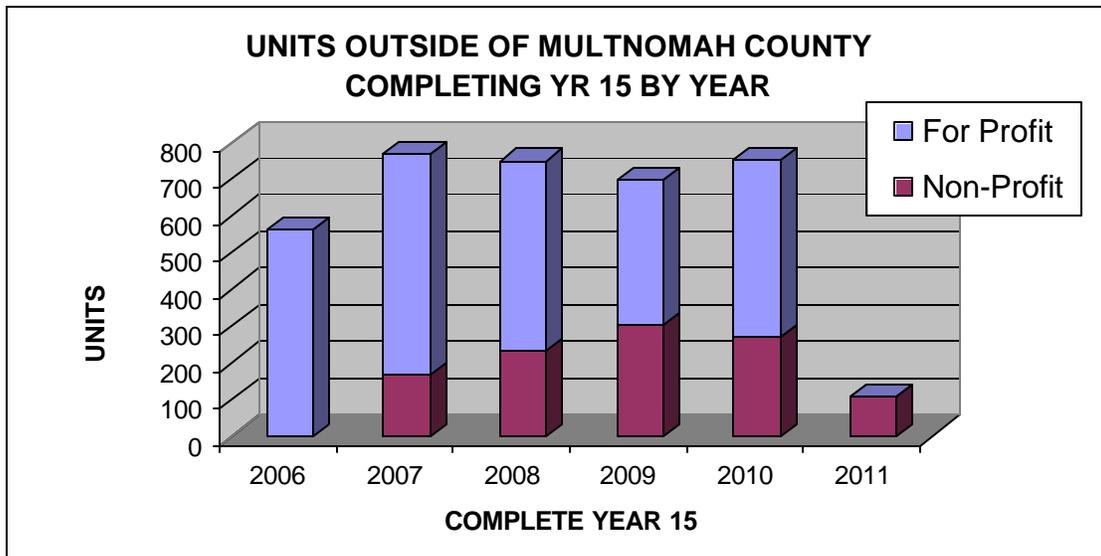
<b>MULTNOMAH COUNTY</b>			
	For Profit	Non-Profit	Total
2006	152	665	817
2007	-	44	44
2008	240	191	431
2009	-	238	238
2010	160	543	703
2011	612	95	707
<b>Total</b>	<b>1,164</b>	<b>1,776</b>	<b>2,940</b>



**Attachment C.3**

**Summary of Oregon Projects Located Outside of Multnomah County  
Reaching Year 15 between 2006 – 2011  
(Number of Units Reaching Year 15 by Year)**

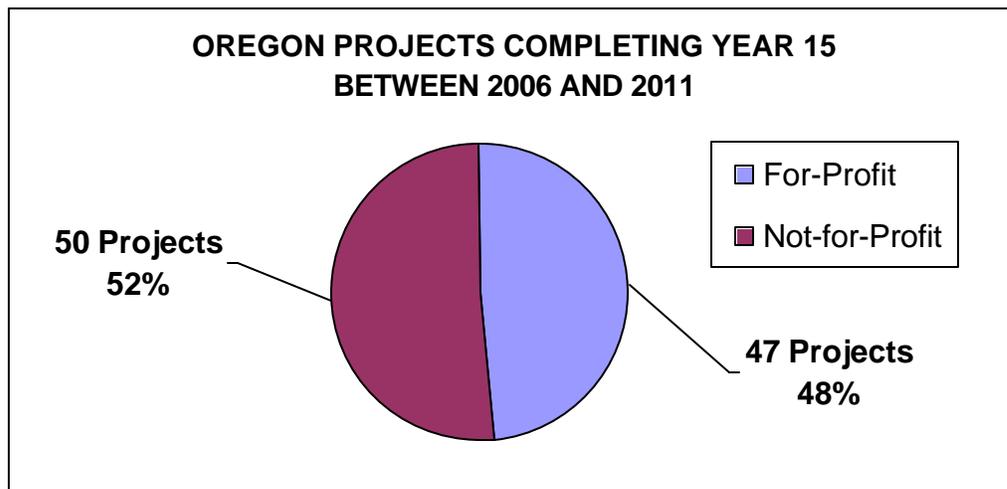
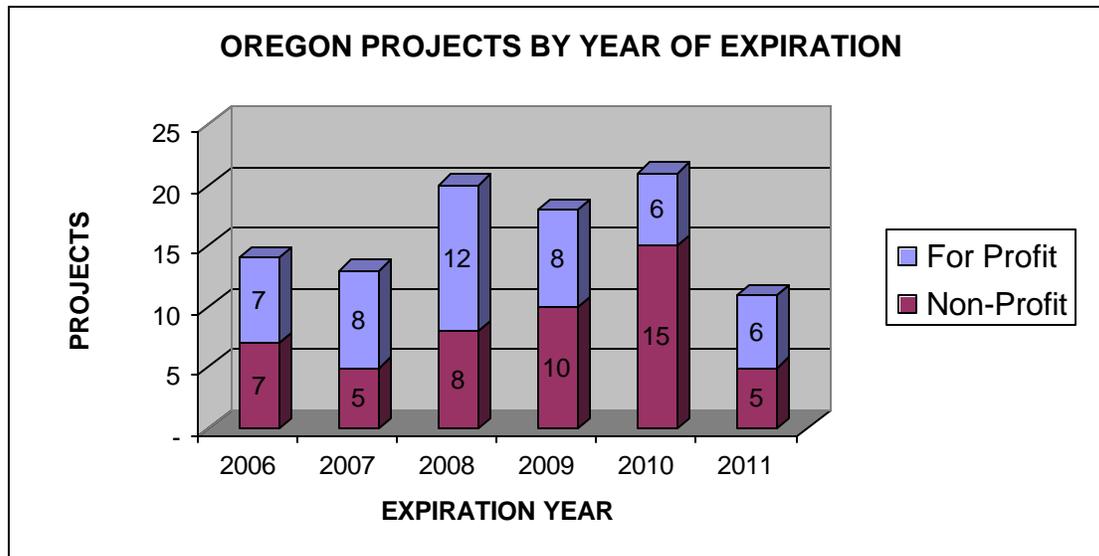
<b>OUTSIDE OF MULTNOMAH CTY.</b>			
	For Profit	Non-Profit	Total
2006	564	-	564
2007	602	166	768
2008	519	230	749
2009	394	302	696
2010	479	271	750
2011	-	106	106
<b>Total</b>	<b>2558</b>	<b>1075</b>	<b>3,633</b>



**Attachment C.4**

**Summary of Oregon Projects (statewide) Reaching Year 15  
Between 2006 – 2011  
(Number of Projects by Year of Expiration)**

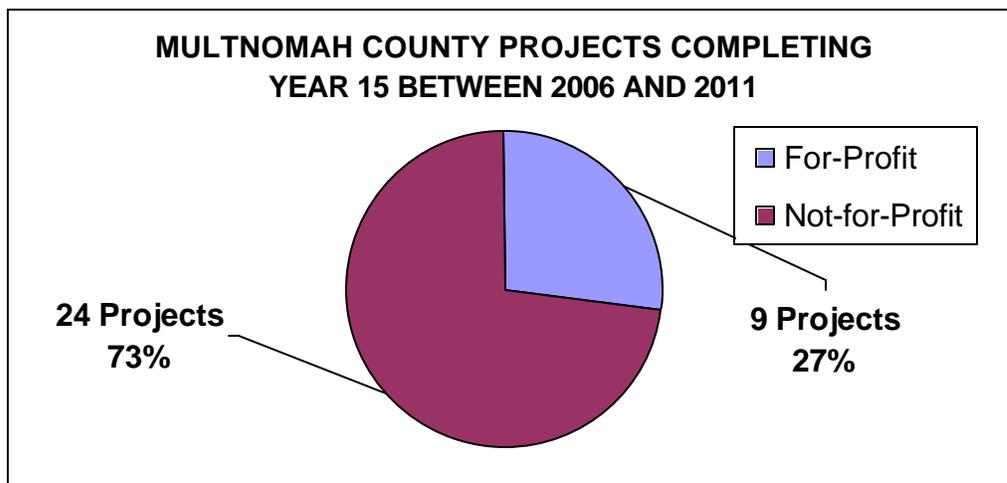
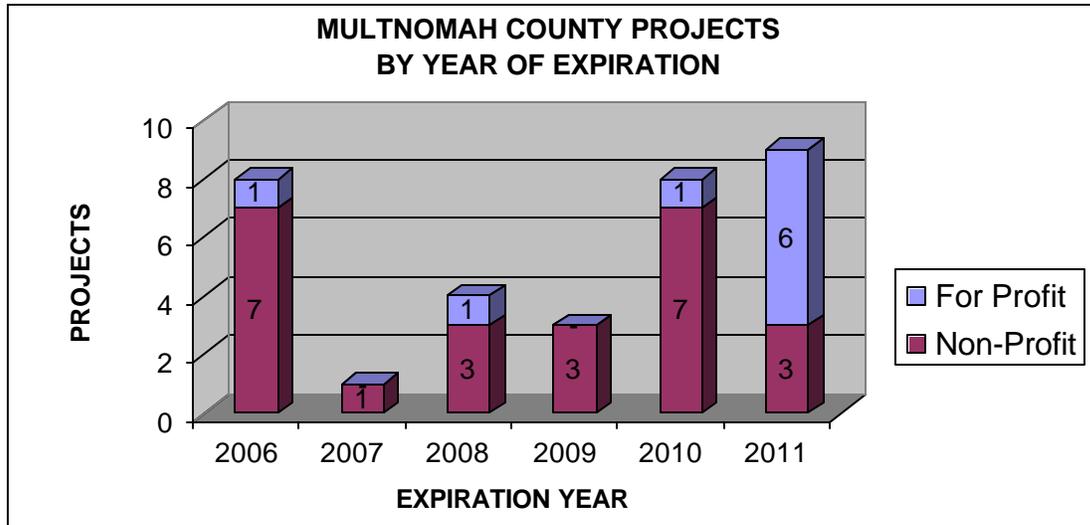
STATE			
	For Profit	Non-Profit	Total
2006	7	7	14
2007	8	5	13
2008	12	8	20
2009	8	10	18
2010	6	15	21
2011	6	5	11
<b>Total</b>	<b>47</b>	<b>50</b>	<b>97</b>



**Attachment C.5**

**Summary of Multnomah County Projects Reaching Year 15  
Between 2006 – 2011  
(Number of Projects by Year of Expiration)**

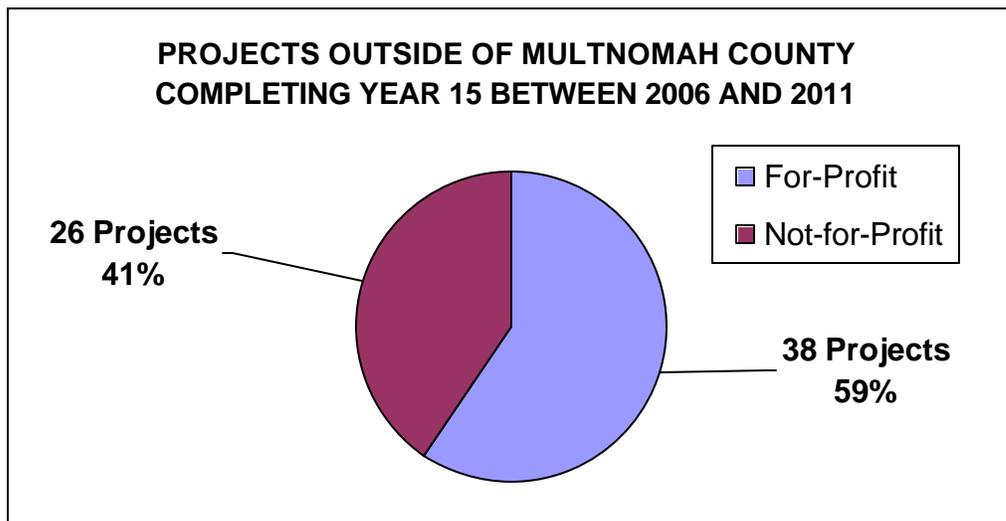
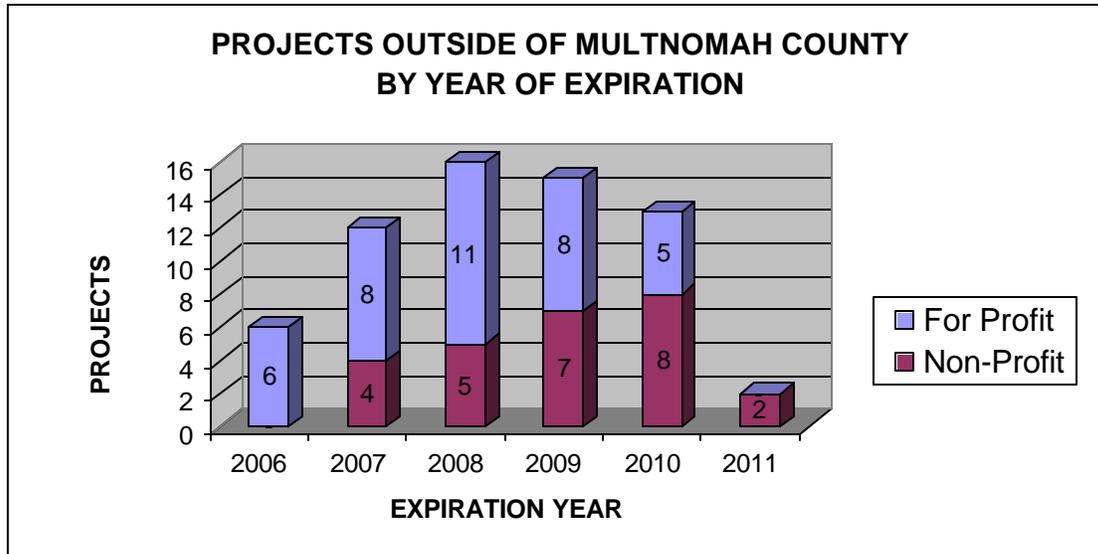
<b>MULTNOMAH COUNTY</b>			
	For Profit	Non-Profit	Total
2006	1	7	8
2007	-	1	1
2008	1	3	4
2009	-	3	3
2010	1	7	8
2011	6	3	9
<b>Total</b>	<b>9</b>	<b>24</b>	<b>33</b>



**Attachment C.6**

**Summary of Projects Located Outside of Multnomah County  
Reaching Year 15 Between 2006 – 2011  
(Number of Projects by Year of Expiration)**

<b>OUTSIDE OF MULTNOMAH CTY.</b>			
	For Profit	Non-Profit	Total
2006	6	-	6
2007	8	4	12
2008	11	5	16
2009	8	7	15
2010	5	8	13
2011	-	2	2
<b>Total</b>	<b>38</b>	<b>26</b>	<b>64</b>

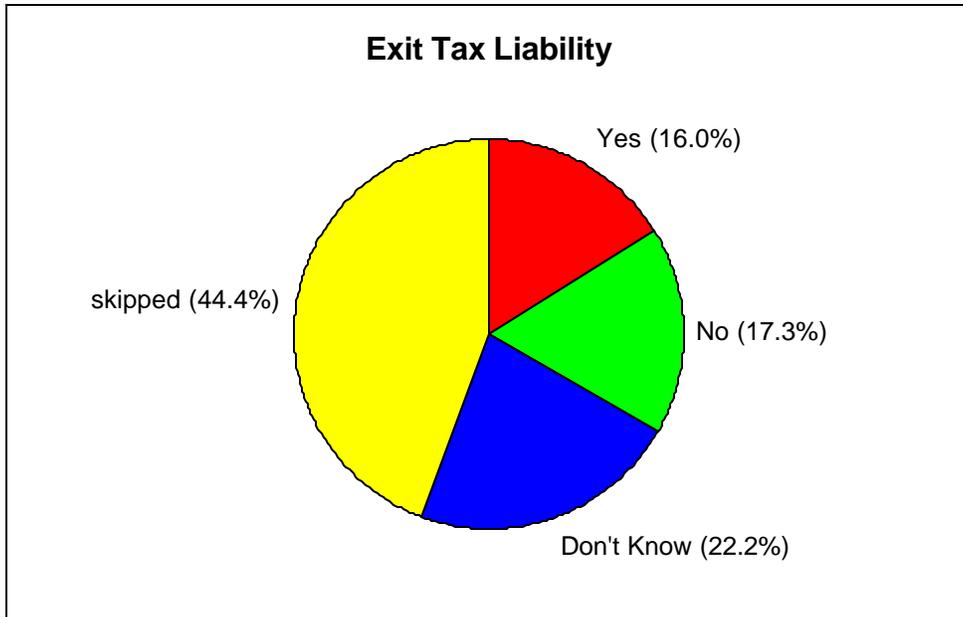


**Attachment C.7**

**Summary of Oregon (statewide) Projects Reaching Year 15  
Between 2006 – 2011**

**Summary of Exit Tax Liability**

**From Survey Question 9.b: Do you expect that there will be an exit tax liability at Year 15?**

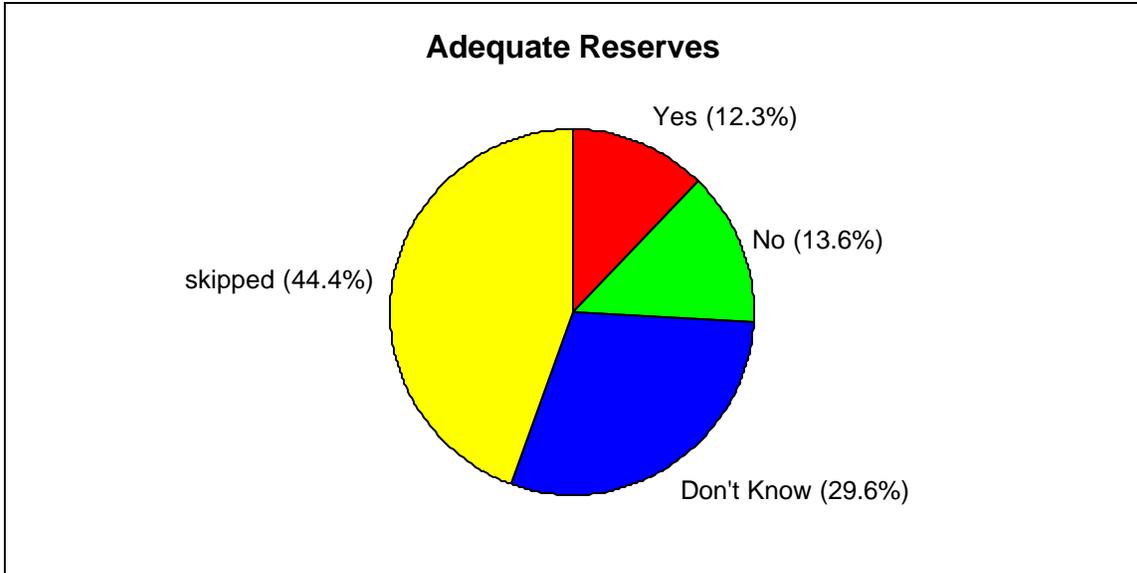


**Attachment C.8**

**Summary of Oregon (statewide) Projects Reaching Year 15  
Between 2006 – 2011**

**Summary of Adequate Reserves**

**From Survey Question 9.c: Do you have adequate reserves to pay an exit tax?**

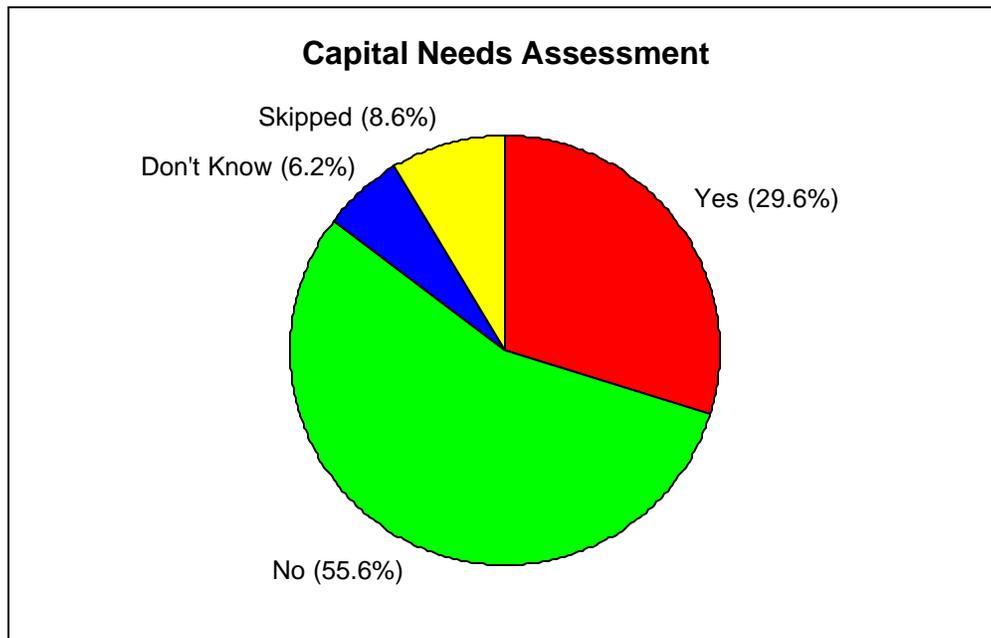


**Attachment C.9**

**Summary of Oregon (statewide) Projects Reaching Year 15  
Between 2006 – 2011**

**Summary of Capital Needs Assessments**

**From Survey Question 10: Do you have a recent capital needs assessment?**

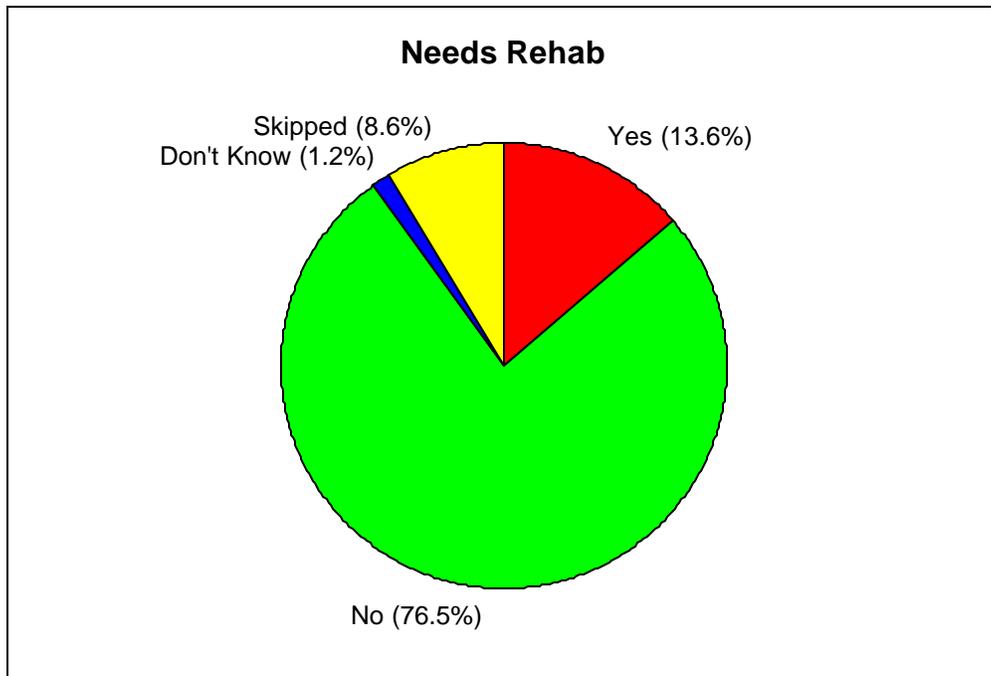


**Attachment C.10**

**Summary of Oregon (statewide) Projects Reaching Year 15  
Between 2006 – 2011**

**Summary of Extensive Rehabilitation**

**From Survey Question 11: Is the project in need of extensive rehabilitation?**



**Attachment D**

**Summary of Projects Reaching Year 15 Between 2006 – 2011  
Funding Levels Needed To Preserve Affordability  
Based On Percent of Units That Participate In Preservation**

**FUNDING LEVELS NEEDED BASED ON % OF UNITS THAT PARTICIPATE IN  
PRESERVATION**

<b>OREGON UNITS</b>				
<b>Per Unit Level of Funding Needed to Preserve Unit</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
	1,643 Units	3,287 Units	4,930 Units	6,573 Units
\$10,000	\$16,432,500	\$32,865,000	\$49,297,500	\$65,730,000
\$20,000	\$32,865,000	\$65,730,000	\$98,595,000	\$131,460,000
\$30,000	\$49,297,500	\$98,595,000	\$147,892,500	\$197,190,000
\$40,000	\$65,730,000	\$131,460,000	\$197,190,000	\$262,920,000

<b>MULTNOMAH COUNTY UNITS</b>				
<b>Per Unit Level of Funding Needed to Preserve Unit</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
	735 Units	1,470 Units	2,205 Units	2,940 Units
\$10,000	\$7,350,000	\$14,700,000	\$22,050,000	\$29,400,000
\$20,000	\$14,700,000	\$29,400,000	\$44,100,000	\$58,800,000
\$30,000	\$22,050,000	\$44,100,000	\$66,150,000	\$88,200,000
\$40,000	\$29,400,000	\$58,800,000	\$88,200,000	\$117,600,000

<b>UNITS OUTSIDE OF MULTNOMAH COUNTY</b>				
<b>Per Unit Level of Funding Needed to Preserve Unit</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
	908 Units	1,817 Units	2,725 Units	3,633 Units
\$10,000	\$9,082,500	\$18,165,000	\$27,247,500	\$36,330,000
\$20,000	\$18,165,000	\$36,330,000	\$54,495,000	\$72,660,000
\$30,000	\$27,247,500	\$54,495,000	\$81,742,500	\$108,990,000
\$40,000	\$36,330,000	\$72,660,000	\$108,990,000	\$145,320,000