

NEVADA GUIDANCE
POLICY AND PROCEDURES
FOR AFFORDABLE HOUSING DISPOSALS
Southern Nevada Public Land Management Act
(Section 7(b))

Section 7(b):

“The Secretary, in consultation with the Secretary of Housing and Urban Development, may make available, in accordance with Section 203 of the Federal Land Policy and Management Act of 1976, land in the State of Nevada at less than fair market value and under other such terms and conditions as s/he may determine for affordable housing purposes. Such lands shall be made available only to State or local governmental entities, including local public housing authorities. For the purposes of this subsection, housing shall be considered to be affordable housing if the housing serves low-income families as defined in Section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704).”

Section 12704 of the Cranston-Gonzalez National Affordable Housing Act:

“The term “low-income families” means families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary [of Housing and Urban Development] with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.”

I. Definitions.

- A. Affordable housing means housing that serves low-income families as defined in Section 104 of the Cranston-Gonzalez National Affordable Housing Act.
- B. BLM shall mean the U.S. Department of Interior, Bureau of Land Management in Nevada.
- C. Construction means on-going and substantial work dedicated to the building of the dwelling structures and other improvements necessary for the realization of low-income affordable housing projects located on lands conveyed under Section 7(b) of SNPLMA.
- D. HUD means the U.S. Department of Housing and Urban Development in Nevada.
- E. Local governmental entity means any Nevada city or county government.

- F. Local public housing authority means only public corporations created or authorized to be created by Nevada Revised Statutes (NRS) 315.140 to 315.780, inclusive, and any housing authority established and operating prior to July 1, 1975, under the provisions of the Housing Authorities Law of 1943 of the Housing Law of 1951. See NRS 315.170.
- G. Low-income families means families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary of the U.S. Department of Housing and Urban Development (HUD), or as otherwise appropriately defined by the Secretary of HUD for the Las Vegas area pursuant to 42 U.S.C.12704 (10).
- H. Living Space means all areas within a proposed dwelling or structure intended for human occupation, as measured by the exterior walls of the dwelling or structure.
- I. Proponent means any qualified Nevada State or local governmental entity, including local public housing authority, which nominates a project proposal requesting the purchase of public lands for affordable housing purposes under Section 7(b) of the SNPLMA.
- J. Multi-Family Development will be project development of five (5) or more units in accordance with HUD.
- K. Single Family Development will be project development of one to four (1- 4) units in accordance with HUD.

II. Policy.

- A. Pursuant to Section 7(b) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343, Public Law 105-263) (SNPLMA), and in accordance with Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) (FLPMA), BLM, in consultation with HUD, may make available for disposal only to State or local governmental entities, including local public housing authorities, land in the State of Nevada at less than fair market value. BLM is authorized under Section 7(b) of SNPLMA to place terms or conditions on such disposals as determined by BLM, in consultation with HUD, to be appropriate under the circumstances of each case.
- B. Eligible Land - Only land which has been identified as suitable for disposal is eligible to be sold under Section 7(b) of SNPLMA. Lands may be identified as suitable for disposal by BLM following the planning requirements of Section 202 of FLPMA (43 U.S.C. 1712), or by Congress under SNPLMA. For those lands within the disposal boundary of SNPLMA, as amended, the joint selection requirements under SNPLMA Section 4(d) shall apply.
- C. No more eligible public lands than are reasonably necessary for the proposed affordable housing project as determined by BLM in consultation with HUD shall be sold under Section 7(b) of SNPLMA.

- D. Eligible public lands shall be sold under Section 7(b) of SNPLMA only for definitely proposed projects for which construction will begin within five years of conveyance of the land.
- E. Direct Sale. The preferred method of sale under Section 7(b) of SNPLMA will be direct sale, however, BLM, at its discretion, may use any lawful method of sale available (i.e., competitive or modified competitive). All direct sales must be justified under the provisions at 43 Code of Federal Regulations (CFR) 2711.3-3(a).
- F. Affordable Housing Purposes. Only those proposed projects which commit 50%, or more, of living space to affordable housing shall be considered by BLM to be a project for “affordable housing purposes” under SNPLMA. No “affordable housing” project under SNPLMA shall consider any uses other than residential use. The percentage of living space committed to affordable housing will be the percentage of acreage eligible to be sold at less than fair market value under SNPLMA.
- G. Segregation and Reservation for Affordable Housing Purposes. Federal public lands nominated by a local governmental entity or local public authority to be sold for affordable housing purposes will not be segregated from the operation of public land laws or reserved (set aside) from applications for other uses, until BLM publishes a notice of realty action (NORA). Should segregation or reservation be considered necessary prior to publishing a NORA while BLM and HUD consider the nomination, the local governmental entity or local public housing authority shall consult with the appropriate BLM office.

III. Nomination.

- A. The State of Nevada, or any appropriate Nevada local governmental entity, may submit on separate paper a written nomination or request in accordance with the required information prescribed by the BLM Nevada State Office to the local Nevada BLM office to purchase eligible land for affordable housing. The provisions of 43 CFR Subpart 1822, *Filing a Document with BLM*, shall apply to nominations made under this policy for affordable housing,
- B. The nomination shall include:
 - 1. Name of the governmental entity requesting a nomination.
 - 2. A legal land description based on a survey approved by BLM and the approximate number of acres of the land sought for affordable housing purposes.
 - 3. A map produced on a scale acceptable to BLM of the location of the land sought for affordable housing purposes.
 - 4. A description of the affordable housing project, including:
 - (a) A development or site plan depicting the minimum number and type of dwelling units and other facilities to be constructed on the property.

- (b) A narrative addressing the consistency of the project with the State or a local Consolidated Plan approved by the Nevada State Office of HUD.
 - (c) References to the project in an Annual Affordable Housing Action Plan approved by the Nevada State Office of HUD.
 - (d) A description of the target resident population including information sufficient to assess the qualification of the project according to the definition of low-income families. If the development involves a mix of affordable and non-affordable housing categories, the nomination should include the percentage amount of living space committed for development in each category.
 - (e) A construction schedule.
 - (f) A narrative describing the connection and involvement of the proponent over the life of the project.
 - (g) A narrative describing what other (if any) affordable housing assistance programs will be a part of the project.
5. Any other information deemed necessary by BLM or HUD for review of the nomination.
- C. Within the SNPLMA boundary, the applicable local governmental entity will include a joint selection determination with its request under Section 7(b) SNPLMA proposals.

IV. Nomination Processing.

- A. BLM will determine if the nomination is for land eligible to be conveyed under Section 7(b) of SNPLMA, in accordance with this policy, and all other applicable federal laws and regulations. If BLM determines that the nomination is for lands not eligible to be conveyed under Section 7(b) of SNPLMA, the nomination will be denied.
- B. A copy of nominations for eligible lands received by BLM shall be immediately forwarded by the administratively responsible BLM Field Office to the HUD office located at:

U.S. Department of Housing & Urban Development
Nevada State Office
300 Las Vegas Boulevard South
Suite 2900
Las Vegas, NV 89101
Attn: SNPLMA Nomination Processor

- C. HUD's Responsibilities - HUD will assess the standing of the proponent of a project in its annual review of local governments and housing authorities. Nominations by proponents who are not in good standing with HUD's annual review process will be returned to BLM with a recommendation from HUD that the nomination be denied.
- D. HUD will assess the nomination to determine if the proposed project serves low-income families. Nominations for proposed projects, which do not serve low-income families, will be returned to BLM with a recommendation from HUD that the nomination be denied.
- E. HUD will assess the need for the project at the proposed location consistent with the appropriate Consolidated Plan and the Local Action Plan. Nominations for proposed projects that are not supported by a legitimate need will be returned to BLM with a recommendation from HUD that the nomination be denied.
- F. HUD will determine all of the other HUD incentives or programs, if any, involved in the proposed project and advise BLM as to how and whether these additional HUD incentives or programs will be utilized for the project.
- G. HUD will notify BLM of all other relevant considerations or concerns it has with any nomination it receives, and will make recommendations to BLM on whether it believes the nomination should be approved, denied, or modified.
- H. HUD will make a recommendation to BLM whether to approve, deny, or modify within 60 days of HUD's receipt of the nomination from BLM.
- I. BLM's Responsibilities - The appropriate BLM Field Manager will approve, deny, or request modification of the nomination as recommended by HUD. BLM will only approve those nominations recommended for approval by HUD. BLM may deny, or request modification of any nomination regardless of HUD's recommendation, if:
 - 1. The proposal would be inconsistent with the purpose for which adjacent public lands, if any, are managed;
 - 2. The proponent is not qualified;
 - 3. The proposal is inconsistent with valid existing rights on the property; or
 - 4. The proposal would otherwise be inconsistent with other applicable laws.

- J. Approval of a nomination by BLM means only BLM will propose that the land be sold under Section 203 of FLPMA (43 U.S.C. 1713) to the proponent for affordable housing purposes in accordance with all other applicable laws and regulations. Such proposals will be subject to, among others, publication of a NORA under 43 C.F.R. Part 2711, protest and appeal procedures under 43 CFR Part 4, environmental site assessments, environmental analyses pursuant to the National Environmental Policy Act, and consultation with other federal, state, tribal or local governments, as necessary.

V. Determination of Less than Fair Market Value

Upon the determination of the fair market value (FMV) based upon a federally-approved appraisal, the following discount percentages for the respective median income category will be administratively applied to the FMV by BLM in order to establish the value of the public lands to be sold under these provisions.

Multi-Family Development Income Level (5 or more units)	Percent of Median Income	Discount
Extremely Low	<60%	95%
Very Low/Low	61% to 80%	90%
Single Family Development Income Level (1 – 4 units)	Percent of Median Income	Discount
Extremely Low	<60%	95%
Very Low/Low	61% to 80%	90%

The figures in the above table are applicable to Clark County, Nevada. Calculations in other jurisdictions of Nevada as determined by BLM in consultation with HUD may produce a different set of outcomes.

- A. The determination of less than fair market value will be calculated using the attached two Illustrations, I and II, appropriately.
- B. For proposals involving simply either development income level (single or multi-family) affordable housing, use Illustration I for calculations of the sale price with the appropriate discount.
- C. For proposals involving more than one development income level of affordable housing, use Illustration II for calculations of the sale price with the appropriate discount.

- D. For proposals involving more than two affordable housing income levels, the BLM Field Offices shall consult with the BLM Nevada State Office prior to processing these complex proposals.
- E. The above tables and the appropriate discounts will be recalculated and reissued every two years. The method of calculation has been agreed upon between the agencies and includes land costs, construction costs and median income data.

VI. Terms and Conditions.

- A. BLM may use such terms and conditions as determined to be appropriate under the circumstances of each case. Such terms and conditions may include, but not be limited to: patent restrictions; reporting requirements; performance requirements; reversionary clauses; or such other terms, covenants and conditions necessary to ensure the property is used for affordable housing purposes.
- B. Period of Affordability - Depending upon the unique circumstances of each proposal, BLM, after consultation with HUD, may determine a length of time for which the property will be required to remain in use for affordable housing purposes only.
 - 1. A likely scenario is that projects involving ownership may be required to be used for affordable housing purposes for 20 years, while projects involving rental units may be required to be used for affordable housing purposes for 40 years. After the period of affordability has lapsed, affordable housing use restrictions may expire.
 - 2. Nothing in this section shall be interpreted to prevent BLM from requiring land to remain in use for affordable housing in perpetuity.
 - 3. The period of affordability will commence upon the issuance of a certificate of occupancy or its equivalent.
- C. Enforcement - Any patent restriction, reporting requirement, performance requirement, or reversionary clause may be made expressly enforceable by HUD, or other third party beneficiary, in addition to being enforceable by BLM. In addition, enforcement may entail a requirement that BLM be paid current fair market value upon default of any affordability restriction. Consistent with Section II.D. of these provisions, all patents/deeds issued under Section 7(b) SNPLMA shall contain a provision that requires the land to revert to the U.S., at its option, if a particular “affordable housing project” is not under construction within five years of date of patent issuance.
- D. The United States may take legal action against the appropriate party to recover any financial losses to the public for any land that is disposed of under Section 7(b) of SNPLMA, but not in use for affordable housing, or in violation for any of the terms and conditions of the disposal.