



**Policy and Procedures for Public Land Disposal for Affordable Housing Pursuant to the
Southern Nevada Public Land Management Act (Section 7(b))**

Memorandum of Understanding

By and Between

**U.S. Department of the Interior, Bureau of Land Management, and
U.S. Department of Housing and Urban Development**

I. Parties

This Memorandum of Understanding (MOU) is entered into by and between the United States Department of the Interior Bureau of Land Management (BLM) and United States Department of Housing and Urban Development (HUD), (each, individually, a "Party," or collectively, the "Parties;" each singular reference to a Party shall refer jointly, severally and collectively to the Parties as set forth herein).

II. Authorities

BLM enters into this MOU under paragraph 307(b) of the Federal Land Policy and Management Act of 1976, as amended (FLPMA) (43 U.S.C. 1737(b)).

HUD enters into this MOU pursuant to section 3(b) of the Department of Housing and Urban Development Act of 1965 (42 U.S.C. 3533(b)).

III. Purpose

The Parties wish to enter into this MOU to implement the consultation provision set forth in section 7(b) of the Southern Nevada Public Land Management Act of 1988 (SNPLMA) (Public Law 105-263)¹ and to confirm their ongoing commitment to regularly revisit their respective roles and responsibilities in fulfilling its requirements. Through this MOU, the Parties

¹SNPLMA section 7(b) Affordable Housing --The Secretary, in consultation with the Secretary of Housing and Urban Development, may make available, in accordance with section 203 of the Federal Land Planning 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 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). The Cranston-Gonzalez Act defines the term "low-income families" to mean families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary [of HUD] may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the [HUD] 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.) (42 U.S.C. 12704(10))

detail their roles and responsibilities; and confirm their intent to revisit these roles not less than every 10 years, unless market conditions or community housing needs require earlier review.

IV. Background

Section 7(b) of SNPLMA authorizes BLM, in consultation with HUD, to sell at less than fair market value as determined by BLM, BLM-managed public lands situated in Nevada for Affordable Housing purposes, i.e., housing that serves low-income families as defined in the Cranston-Gonzalez Act. In 2003, BLM, with HUD, developed interim guidance setting forth the policy and procedures for public land disposals for Affordable Housing purposes under section 7(b) of SNPLMA, and in 2006, finalized the guidance (the “Nevada Guidance”). The Nevada Guidance was published as Bureau of Land Management Instruction Memorandum No. NV-2006-067 on August 8, 2006. At the time, the Parties contemplated updating the Nevada Guidance every 2 years. Despite this intention, as of 2020, the Nevada Guidance published in 2006 was the most recent guidance for implementing section 7(b) of SNPLMA. In 2022, in consultation with HUD, and with input from the Nevada affordable housing advocacy community and BLM partners, BLM revised the Nevada Guidance from 2006, publishing revised guidance on September 29, 2022, in Instruction Memorandum No. NV-2022-025.

V. Scope of this MOU

This MOU formalizes the process for BLM consultation with HUD under SNPLMA section 7(b) to facilitate BLM making available, in accordance with section 203 of FLPMA, land in the State of Nevada at less than fair market value and under other such terms and conditions as BLM may determine for Affordable Housing purposes.

VI. Definitions

1. Affordable Housing means residential housing and amenities that serves Low-Income Families as defined by the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704).
2. Affordable Housing Development means residential housing constructed and operated to serve Low-Income Families subject to operating agreements, deed restrictions, financial guarantees, and other protective measures that will be enforced by a Proponent with jurisdiction. For the purposes of this MOU, an Affordable Housing Development may also be referred to as a “project.” Affordable Housing Developments can include either “for rent” or “for sale” development.
3. Conveyance Document means a patent, quitclaim deed, or other document of conveyance issued by BLM pursuant to FLPMA section 203 to convey land out of Federal ownership.
4. Developer means a party that is not a Proponent and oversees construction and/or operation of an Affordable Housing Development.

5. Disposition and Development Agreement means a binding agreement between a Proponent and a Developer that describes how the two parties will work together to use the Eligible Land in compliance with SNPLMA section 7(b) and applicable affordable housing regulations. A Disposition and Development Agreement (DDA) will include the affordability period required by the Proponent and will contain land use restrictions that the Developer must follow during the long-term use of the Eligible Land for Affordable Housing, including the potential remedies for correcting violations.
6. Eligible Land means public land, as defined by FLPMA section 103(e) and 43 CFR 2710.0-5(a), that is within the State of Nevada and that BLM has identified in a land use plan as meeting one or more of the disposal criteria described in FLPMA section 203 that BLM can convey pursuant to SNPLMA section 7(b).
7. Low-Income Families means families whose incomes do not exceed 80 percent of the Area Median Income, as determined annually by the Secretary of HUD, or as otherwise defined by the Secretary of HUD pursuant to 42 U.S.C. 12704.
8. Nomination means the assembly of documents and supporting information that the Proponent submits to BLM, including, but not limited to, official correspondence from a Proponent requesting Eligible Land, maps, reports, schedules, geospatial data, and other information. At a minimum, a Nomination must include the items listed in section VII(2)(C) of this MOU.
9. Partners means individuals from the Nevada affordable housing community including but not limited to State or Local Governmental Entities, developers, lenders, underwriters, and congressional staff members.
10. Proponent means the State or Local Governmental Entity, including local public housing authorities, which nominates a project proposal requesting to purchase public land for Affordable Housing pursuant to SNPLMA section 7(b).
11. Reversion Clause means terms, conditions, or clauses in a Conveyance Document that allow the United States to revert title if a deed condition has been violated.
12. SNPLMA Implementation Agreement means the document that establishes policies, procedures, and business rules for implementation of SNPLMA, as amended. The SNPLMA Implementation Agreement can be obtained at:
<https://www.blm.gov/snplma>
13. State or Local Governmental Entity means any Nevada state, county, or city governmental entity, including Public Housing Authorities.

VII. Agreements

- 1. General.** Under this MOU, the Parties agree to engage in cooperative efforts to:
 - A. Ensure that Nominations for Eligible Land are processed and reviewed in accordance with the legal and policy requirements as outlined in sections 2 and 3 of part VII of this MOU.
 - B. Support BLM's prompt issuance of guidance implementing SNPLMA section 7(b) and this MOU and
 - i. Review and revise such guidance as necessary not less than once every 10 years.
 - ii. Ensure that such guidance is updated in accordance with affordable housing needs of Nevada communities.
 - C. Meet at least annually to discuss project progress and possible program modifications (as requested by Partners or as otherwise needed as determined by BLM or HUD).
- 2. BLM Responsibilities.**
 - A. BLM intends to complete its reviews of Nominations for Eligible Land submitted by project Proponents within 30 calendar days of submission. BLM will notify the Proponent if the Nomination includes public lands that are not Eligible Land.
 - B. Once BLM completes its review of the Nomination and finds the Nomination to be complete and for Eligible Land, BLM will make its formal request for consultation to HUD and forward the Nomination to the HUD Nevada Field Office.
 - C. BLM agrees that its formal request for consultation to HUD will be sent to the HUD Nevada Field Office Director and will include the following documentation submitted by the project Proponent as part of the latter's complete Nomination:
 - i. Name of the project, project Proponent and proposed Developer.
 - ii. Documentation regarding project Proponent's capacity to manage Affordable Housing Developments, including the following:
 - a. If the Proponent receives HUD's CPD formula funding:
 - 1) A certification from the Proponent that the proposed project is consistent with the Proponent's Consolidated Plan, which has been acknowledged by HUD's Office of Community Planning and Development (CPD).
 - 2) A copy of the most recent, publicly available Action Plan acknowledged by HUD CPD, which includes references to the proposed project.
 - 3) A copy of the most recent Annual Performance Assessment issued by HUD CPD finding that the Proponent has made satisfactory progress in carrying out its Consolidated Plan, including its most recent Action Plan for HUD CPD formula programs.

- b. If the Proponent does not participate in HUD's CPD formula programs and does not produce the plans described in (a)(1) and (2) above, the entity must submit other evidence of ongoing capacity to oversee an Affordable Housing Development.
 - iii. A description of the proposed Affordable Housing Development.
 - iv. A draft DDA to be executed by the Proponent and Affordable Housing Developer, which includes the proposed restrictive covenant ensuring the long-term use of the project for housing Low-Income Families.
- D. Notwithstanding the completion by HUD of its responsibilities as set forth in section VII of this MOU, nothing in this MOU shall be interpreted to prevent BLM from approving the Nomination once it has completed its own review of the Nomination if HUD does not respond to BLM's request for consultation within 90 calendar days. Approval of a Nomination by BLM means only that BLM will propose that the land requested in the Nomination be sold to the Proponent pursuant to section 203 of FLPMA (43 U.S.C. 1713), the sale regulations at 43 CFR 2710, and in accordance with all other applicable laws and regulations.
- E. If, prior to issuance of any Conveyance Document, the Proponent proposes material modifications to the proposed form of use restriction or unit configuration, BLM may request subsequent HUD consultation and review of documents relevant to such proposed modifications to confirm that the Eligible Land will be used for Affordable Housing. Such subsequent requests for consultation should be directed to the HUD Nevada Office Director, who will coordinate with the appropriate HUD office to promptly complete the requested review.
- F. BLM further agrees to provide the HUD Nevada Field Office Director with a copy of the DDA once executed along with a copy of the recorded land patent or other Conveyance Document transferring ownership of the Eligible Land to the Proponent. Electronic copies of these documents are preferred by HUD.

3. HUD Responsibilities During Consultation Regarding the Nomination for Land Disposal for Affordable Housing.

HUD agrees to the following:

- A. *Distribution of Affordable Housing Nomination for Consultation Review.* Upon receipt by the HUD Nevada Field Office of a Nomination forwarded by BLM for consultation, the Nevada Field Office Director will coordinate with the HUD Regional Office in San Francisco, as appropriate, to HUD CPD, HUD San Francisco Office of Public Housing (HUD OPH), and the San Francisco Office Regional Counsel (HUD OGC) within 5 calendar days of receipt of such Nomination, or as soon thereafter as possible.
- B. *Review of Affordable Housing Nomination in Response to Request for Consultation.* HUD CPD, HUD OPH, or HUD OGC will endeavor to complete their respective reviews within 80 calendar days from their receipt of the Nomination.

- i. HUD CPD will review to confirm that (i) the Proponent referenced, and the Nominated project appears in HUD's Action Plan for the applicable year; and (ii) the Nominated project is consistent with a housing need identified in the project Proponent's Consolidated Plan, if appropriate. HUD CPD will confirm, if appropriate, that there is no basis to discontinue the Proponent's participation in HUD CPD formula programs based on the most recent available information.
- ii. If the project Proponent is a public housing authority, HUD OPH will review to confirm, if appropriate, that the project proponent is not in troubled status.
- iii. If any reviewing HUD office finds that either (i) the project is inconsistent with a housing need identified in the Proponent's Consolidated Plan, (ii) there is a basis to discontinue the Proponent's participation in HUD CPD formula programs, or (iii) that the Proponent is in troubled status, the HUD reviewing office must first notify the leadership of the appropriate HUD Headquarters office at the Assistant Secretary level, or equivalent (e.g., Principal Deputy Assistant Secretary), before returning any findings to the Nevada Field Office Director.
- iv. If, prior to issuance of any Conveyance Document, the Proponent proposes material modifications to the proposed form of use restriction or unit configuration, BLM may request subsequent HUD consultation and review of documents relevant to the proposed modification to confirm that the Eligible Land will be used for Affordable Housing. Such subsequent requests for consultation should be directed to the HUD Nevada Field Office Director, who will coordinate with the appropriate HUD office to promptly complete the requested review.

C. *Consultation Request Response.* HUD CPD, HUD OPH, and HUD OGC will return their findings regarding the Nomination to the Nevada Field Office Director for communication to BLM. The Nevada Field Office Director will send a consultation response letter to BLM within 5 business days of its receipt of the response of the applicable HUD Program Office.

VIII. Compliance Review of Conveyance Document Recipient

Each Party will conduct any compliance review of Affordable Housing Developments on Eligible Land made available under SNPLMA section 7(b) according to its respective requirements, policy, and procedures. To the extent appropriate and practicable, each Party will coordinate and work with the Proponent to remedy issues to avoid the need for land title to revert to the United States. The United States may take legal action against the appropriate party to recover any financial losses to the public for any public land that is sold pursuant to SNPLMA section 7(b), but not in use for Affordable Housing as specified in the Conveyance Document or is in violation of any of the terms and conditions of the land disposal. In the event the United States initiates legal action, the Parties will coordinate to assist the Department of Justice and any other Federal agency involved in such action.

IX. No Financial Commitment

The purpose of this MOU is to set forth in general terms, the basis on which the Parties will cooperate, and as such, does not constitute a financial obligation for expenditures, personnel, property, or services. This MOU is a nonbinding expression of intent. Any future transfer of funds or obligation to undertake certain work must be confirmed by an appropriate funding agreement executed by authorized officials of the Parties. In addition, this MOU does not give any third party any benefit, legal or equitable right, remedy or claim under this MOU.

X. Period of Agreement

This MOU shall become effective the date of the last signature herein and remain in effect until January 1, 2034, unless terminated by written notification of any of the Parties in accordance with section XII below.

XI. Entire Agreement

This MOU constitutes the entire agreement among the Parties, superseding all prior oral or written agreements, understandings, representations, warranties, and courses of conduct and dealing regarding the subject matter hereof.

XII. Modification and Amendment Provision

This MOU may be modified or amended by written agreement of all Parties. Requests for amendments to this MOU may be initiated by any Party through written notification to all Parties. A Party may withdraw from this MOU for any reason 30 days after notice of withdrawal has been provided to the other Party.

XIII. Publicity

The Parties will coordinate all joint agency publicity regarding this MOU, and such consultation will include the form, contents, and timing of any such publicity.

XIV. Points of Contact

Bureau of Land Management:

Nevada State Office
Lands and Realty Program Lead
1340 Financial Boulevard
Reno, Nevada 89502

U.S. Department of Housing and Urban Development:

Nevada Field Office
Field Office Director
302 East Carson Street, 4th Floor
Las Vegas, Nevada 89101-5911

Acceptance and Signature of Each Providing Party:

United States Department of the Interior



Deputy Secretary

JUL 13 2023

Date

United States Department of Housing and Urban Development



Deputy Secretary

7/13/23

Date