



STATE OF MICHIGAN

RICK SNYDER
GOVERNOR

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING

GARY HEIDEL
EXECUTIVE DIRECTOR

MEMORANDUM

TO: NSP1 GRANTEES & NSP2 CONSORTIUM MEMBERS
FROM: STEPHEN LATHOM, SENIOR POLICY SPECIALIST, EXECUTIVE OFFICE
SUBJECT: POLICY UPDATE—CHANGE OF USE, LAND BANKING, AND DEMOLITION
DATE: SEPTEMBER 2, 2011
CC:

Eligible Properties, Activities, and National Objective

HUD regulations allow for the change of use for a property once a national objective has been achieved. HUD has clarified that any NSP-eligible property acquired for NSP where demolition addresses blight in a qualified LMMA area meets the LMMA (i.e. area benefit) national objective. (See the Q&A published on April 8, 2011 for a more detailed discussion of the criteria necessary to demonstrate LMMA area benefit for demolition projects.)

HUD has also clarified that the acquisition, management, and disposition of properties in LMMA census tracts under Use C as part of a comprehensive revitalization effort where redevelopment is taking place may be deemed to meet the LMMA objective under NSP. (Note: Use C in and of itself does not automatically meet LMMA. The strategy must be in place and other coordinated activities occurring. Holding properties indefinitely does not meet the objective, so any property held more than ten years after the initiation of the NSP grant will be deemed to not meet the LMMA objective.)

Once the LMMA objective is reached, the properties may be disposed of according to certain guidelines discussed in detail below. HUD has stated in writing that properties may be acquired under Use B, C or E, with demolition occurring under Use D. This does not address all possible scenarios, but does clarify the rules and opens opportunities to move forward immediately. Other scenarios will be discussed later in this memorandum. The impending loss of millions of dollars in federal funding calls for immediate action on your part.

Nature and Scope of Demolition

If you examine the properties you have under consideration you might find more demolition to be done than you initially thought. Do it! HUD has clarified that the scope of demolition allowable under the rules is open to a broad range of actions not limited to just removing a structure. The following actions are authorized: complete removal of all structures including pavement, poles and piping, removal of debris, proper securing of utility connections, leveling backfilling, compacting, moving structures, sidewalks to conform to right of way, barriers to prevent entry, seeding and locally-required stake surveys. If you propose other actions to qualify, submit your request in writing to your CD Specialist(s) with a copy to Michele Wildman at wildmanm@michigan.gov . Keep in mind that demolition Use D of a blighted property brings your property

to a point where it can be disposed of in accordance with approved guidelines, whether subsequent eligible development or activities take place on that property or not.

B, C or E for Acquisition

HUD has clarified in writing that properties may be acquired under any of these Uses according to the limitation on each, i.e. B and C acquisitions must be foreclosed (and residential for NSP2), E acquisitions vacant - per program definitions. For foreclosed properties, where the property-specific disposition details are not known in advance, but an approved plan for overall management and disposition exists, C would be the preferred classification for acquisition, as it allows the costs for ongoing management, as well as a wide range of options for future use. Use C properties where NSP2 eligible redevelopment occurs later and essentially become new projects. They should then be set up separately and have those development costs paid through Use E. There is no minimum or maximum time for holding a property as a Use C property except the 10 year limitation as noted above.

Approved Responsible Disposition – Community Plan and Property-Specific Conveyances

Properties meeting the above area benefit criteria, but being disposed to a non-NSP use, may be disposed of according to an approved responsible disposition plan and a property-specific conveyance of responsibility.

Each property-specific conveyance will enforce and record restrictions on the use and configuration of the site that reflect and enforce the goals and provisions of the approved Community Plan. Each conveyance, unless immediately obvious from the documentation, must be accompanied by a written rationale that relates to the specific objectives of the Community Plan. Each conveyance will conform to federal rules for recovery of fair market value where required. Federal rules currently require recovery of fair market value for all properties where the total NSP investment exceeds \$25,000 and the property is disposed to a non-CDBG-eligible use. HUD encourages grantees to recover other costs as the grantee determines feasible. All recovered costs are Program Income to the NSP program. Full documentation of the transactions and rationales for each property must be maintained until further notice in the accessible records of the grantee and must be readily transmitted electronically upon request to MSHDA.

Each Community Responsible Disposition Plan will have the following objectives and characteristics:

- Assure that Disposition Plan is developed in conjunction with an overall neighborhood revitalization plan that includes a community input process.
- Assure property is conveyed with protections in place to ensure that it does not become blighted or otherwise have an adverse effect on the neighborhood (e.g. the conveyance could be accompanied by a deed restriction, be subject to a reverter clause, or otherwise have legally enforceable means in place so the NSP2 grantee can enforce basic property maintenance expectations and use restrictions).
- Assure clear title with defined reuse conditions. Minimize or eliminate potential for future disputes over boundaries, liabilities from old utility bills, or other obligations.
- Prioritize dispositions according to community priorities, in order to minimize disputes or indecision about how any particular property will be disposed.
- Convey and use property to the direct benefit of low/mod households wherever immediately feasible, e.g. conveyance to an LMMI neighbor or to a community garden in close proximity to LMMI households.
- Convey and use property to the general benefit of the neighborhood, e.g. create buffers between commercial and residential, establish green areas, other public service uses.
- Establish records of those dispositions to LMMI households or CDBG eligible entities and activities (even though those dispositions have no significance in NSP).
- Specifically control lot sizing (allow expansion or limit expansion) to meet a density objective.

- Place priority on residential uses and uses that most directly benefit the immediate neighborhood over uses that might bring benefit to non-local enterprises.
- In accordance with federal rules, assure recovery of fair market value for all properties where the total NSP investment exceeds \$25,000 and the property is disposed to a non-CDBG-eligible use.
- Enforce, where possible, actions to recover or correct non-conformance on properties that are not used in conformance with the Property-Specific Conveyance.

Your Community Plan may be submitted effective immediately to your CD Specialist with a copy to Michele Wildman at wildmanm@michigan.gov.

Disposition Requirements

Generically, it would be preferable that NSP2 assisted properties, including those stand-alone demolition or land banking projects meeting LMMA area benefit, be disposed of toward an NSP2 eligible redevelopment. However, the change of use regulations at 24 CFR 570.505 allow flexibility when market conditions do not allow such a redevelopment or when the neighborhood’s interests are better served by an alternative re-use.

All change of use dispositions must meet the following criteria:

- Initial national objective must always have been achieved, e.g. LMMA under Use D or Use C; AND
- If total NSP investment exceeds \$25,000 either:
 - The subsequent use must meet an LMMA (area benefit) or LMMH (housing development/rehab) objective, OR
 - Documented fair market value must be reimbursed to the NSP program and treated as program income

Note: HUD has been unclear whether transfer to an LMMA household meets the LMMA objective, so it is unclear at this time whether the program does have to be reimbursed FMV if costs are over \$25,000 in those instances. MSHDA is seeking clarification. “Safe harbor” action would be to always recover FMV if costs exceed \$25,000.

Treatment in OPAL

OPAL currently allows for set up of properties using B, C, or E for acquisition and D for demolition. So far it has not provided a mechanism for properly documenting disposition except to an eligible entity or household. OPAL does, however, offer the choice at set up of “Other Residential”. This label may be modified, but is the correct choice in B, C or E. If the set up is for B or E, the grantee is currently offered “Box 4.....green space”. This choice will be modified to read: “We own, or will acquire property to meet an LMMA objective (no unit created)”. This choice should be selected for all properties meeting the criteria.

NOTE: Claiming this entry constitutes an affirmative statement that grantee actions, plan and conveyances meet the full requirements of this policy guidance. This entry is not currently required for properties acquired under Use C, but that does not relieve the grantee of the responsibilities outlined in this guidance. NOTE: Actual disposition of any such property is only allowable if your disposition plan has been approved by MSHDA and you utilize a conforming property-specific conveyance.

Other information

Keep the following things in mind, as there have been misunderstandings:

- Acquisition and eligible demolition with the intention to grant the property to a neighbor or to a service group IS eligible, but eligibility is due to the Use D or C activity, not because of the end disposition.

For other scenarios guidance will be forthcoming as they arise. Please submit other scenarios to your CD specialist with a copy to Michele Wildman at wildmanm@michigan.gov.