

# **NOTICE OF REQUEST FOR EXCEPTION FOR HOME PROGRAM AND WAIVER FOR PROJECT-BASED VOUCHER PROGRAM FOR AMY HOVEY**

At its meeting on October 21, 2021, the Michigan State Housing Development Authority (the “Authority” or “MSHDA”) selected Amy Hovey as its Executive Director, subject to: (a) compliance with Michigan Civil Service rules, regulations and procedures as determined by the Director of Human Resources and (b) completion of any conflict-of-interest documentation and procedures as determined by the Director of Legal Affairs. (A copy of the Resolution appointing Amy Hovey is attached.)

Amy Hovey’s husband, Timothy Hovey, has ownership interests in developments that have received HOME loans and/or Project-Based Vouchers through the Authority. Timothy Hovey has confirmed that he will not apply for HOME loans while Amy Hovey is MSHDA’s Executive Director. Timothy Hovey has also confirmed that he will not apply for Project-Based Vouchers, except for Hillsdale Place, for which a pre-application has been submitted. Amy Hovey’s father-in-law, James Hovey, also has ownership interests in developments that have received HOME loans and/or Project-Based Vouchers through the Authority. Amy Hovey has confirmed that James Hovey no longer develops properties.

To prevent conflicts of interest from arising and to ensure compliance with Michigan law, MSHDA’s Legal Affairs division proposed the establishment of conflict walls that would prevent Amy Hovey from participating in the administration and/or decision-making for the HOME program, the Project-Based Voucher program, and any developments in which Timothy Hovey or James Hovey have an interest. The conflict walls would be established before Amy Hovey’s first day as the Authority’s Executive Director.

MSHDA’s Legal Affairs division has asked the U.S. Department of Housing and Urban Development (“HUD”) to grant (a) an “exception” under the HOME program and (b) a waiver under the conflict-of-interest regulations governing the Project-Based Voucher program for projects owned by Timothy Hovey and James Hovey. (Copies of the spreadsheets listing the HUD assisted properties owned by Timothy Hovey and James Hovey are attached.)

The state or local law that governs ethical questions for State of Michigan employees is the State Ethics Act, MCL 15.341 et seq. The State Board of Ethics has jurisdiction over the Authority’s request for an advisory opinion under MCL 15.345(1)(e) and Administrative Rule 15.6(1). The State Ethics Act empowers the State Board of Ethics to issue advisory opinions upon request relating to matters affecting ethical conduct of a public officer or employee.

On October 22, 2021, the Authority requested through its Chair an advisory opinion to determine whether its proposed conflict walls would enable Amy Hovey to comply with Sections 2(5) and (7) of the State Ethics Act. In its Advisory Opinion dated December 15, 2021, the State Ethics Board held that the proposed conflict walls would effectively address any potential conflicts involving Amy Hovey and enable her to avoid a violation of the State Ethics Act. (A copy of the Advisory Opinion is attached.)

Amy Hovey has signed guaranties for the projects listed below:

NAME OF DEVELOPMENT	HUD FUNDING SOURCE	TYPE OF GUARANTY
Apple Blossom	HOME Loan and Project-Based Section 8	(a) Operating Deficit Guaranty (b) Recapture Guaranty
Barnett Station	TCAP and Project-Based Vouchers	(a) TCAP Guaranty (b) Performance and Completion Guaranty

The guaranties for Barnett Station were signed in November of 2010, and the guaranties for Apple Blossom were signed in February of 2013. Each guaranty includes language that limits the guaranty for Amy Hovey to property that she jointly owns with Tim Hovey. (The Performance and Completion guaranty expired when construction of Barnett Station was completed and the 8609 Low Income Housing Tax Credit forms for each building were issued.)

Any questions should be directed to Clarence L. Stone, Jr., MSHDA’s Director of Legal Affairs at [stonec@michigan.gov](mailto:stonec@michigan.gov) with a copy to Lisa Ward at [wardl10@michigan.gov](mailto:wardl10@michigan.gov). Clarence Stone can be reached by phone at 517-643-6052.

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**MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**

**RESOLUTION – SELECTION OF  
EXECUTIVE DIRECTOR**

**October 21, 2021**

WHEREAS, the Michigan State Housing Development Authority (the “Authority”) is authorized pursuant to Section 21(6) of the State Housing Development Authority Act of 1966, as amended (MCLA 125.1421(6)), to employ an Executive Director; and

WHEREAS, Article II, Section 4 of the Bylaws of the Authority provides for the appointment of the Executive Director by the members of the Authority; and

WHEREAS, Authority members have conducted interviews of candidates for the position of Executive Director.

NOW, THEREFORE, Be It Resolved by the Michigan State Housing Development Authority that

1. The Chair is authorized to conditionally offer the position of Executive Director to Amy Hovey.
2. The offer is subject to: (a) compliance with Michigan Civil Service rules, regulations and procedures as determined by the Director of Human Resources and (b) completion of any conflict-of-interest documentation and procedures as determined by the Director of Legal Affairs.
3. The Chair is hereby authorized on behalf of the Authority to take any actions that the Chair deems necessary in her sole discretion to comply with state and/or federal law and regulations, including but not limited to, requesting advisory or legal opinions and the negotiation and execution of documents, subject to Section 2 above.
4. The agreement that confirms the hiring of the Executive Director, which is a state-classified position, shall be subject to the approval and execution of the State Personnel Director.

**Development**

Apple Blossom  
Barnett Station  
Bellevue Place I and II  
Bramblewood  
Cambridge Woods  
Crystal View  
Kingston Place  
Lexington Square  
Prestwick Village I and II  
Woodland Place

**Funding Summary**

HOME Mortgage  
TCAP Loan  
HOME Mortgage  
HOME Mortgage

**Project Based Vouchers /Section 8**

Section 8  
PBV  
no  
no  
no  
Section 8  
PBV  
PBV  
PBV  
Section 8

**PROJECT NAME**

Bramblewood Senior Apartments  
Cambridge Woods Apartments  
Lexington Square Apartments  
Prestwick Village Apartments  
Woodbrook Senior Apartments

**FUNDING SUMMARY**

HOME / LIHTC (RuralHousServ)  
HOME TEAM/ LIHTC  
HOME / Tax-Exempt / LIHTC  
LIHTC / HOME / Taxable Bond  
HOME / Tax-Exempt / LIHTC (RHS)

**Project Based Vouchers**

No  
No  
HAP contract for PBV  
HAP contract for PBV  
No

**State of Michigan**  
**Board of Ethics**

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**ETH 2021-EA-01**

**IN RE MICHIGAN STATE HOUSING DEVELOPMENT  
AUTHORITY**

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**December 15, 2021**

**Advisory Opinion**

On October 22, 2021, the Michigan State Housing Development Authority (MSHDA), through its chair, asked the State Board of Ethics for an advisory opinion on whether MSHDA's proposed conflict walls would enable a new executive director to comply with §§ 2(5) and (7) of the State Ethics Act. MSHDA indicated that it selected Amy Hovey to be its next executive director but noted that Ms. Hovey's husband had ownership interests in several housing developments that have received funds through programs administered by MSHDA and that he intended to seek future funds through these programs.

To address these conflicts of interest, MSHDA erected internal conflict walls that prohibit Ms. Hovey's involvement in overseeing the housing developments that her husband is involved with and prohibit her from administering or making policy decisions on the programs that fund her husband's housing developments. The conflict walls were also designed to prohibit Ms. Hovey from communicating about the MSHDA programs or specific developments that her husband is involved in with MSHDA staff members who regulate or oversee those programs and developments.

**Jurisdictional and Procedural Issues**

The board met on December 2, 2021, to discuss and analyze the instant request. The board established jurisdiction over MSHDA's request for an advisory opinion under MCL 15.345(1)(e) and Administrative Rule 15.6(1).

## **Pertinent Factual Background**

To meet its goal of providing safe and sound affordable housing to Michigan citizens, MSHDA loans money to rental-housing developers and funds mortgages and home-improvement loans for individuals who meet established income criteria. MSHDA also administers federal programs in this area. One program is the United States Department of Treasury's housing-tax-credit program, which provides tax credits to owners of rental housing through its Taxable Bond and 9% Tax Credit programs. MSHDA also manages housing programs offered through the United States Department of Housing and Urban Development (HUD), including its HOME program and project-based vouchers.

The executive director position is a classified position responsible for MSHDA's overall mission, including administering state and federal loan programs. Among other duties and tasks listed in its position description, the executive director works with MSHDA staff to direct the allocation of federal resources and MSHDA resources; oversees operating and resource budgets; establishes program objectives, goals, and priorities and determines implementation methods; directs the activities of the senior management team in implementing programs and policies; and evaluates the performance of senior management staff. In its request for an advisory opinion, MSHDA described the executive director's role as, among other things, setting the overall strategic direction for MSHDA and overseeing mortgage loan programs, project-based assistance programs, rental assistance programs, contracts and grants, and fair-housing programs.

MSHDA reported a longstanding business relationship with Ms. Hovey's husband and estimated that at the time of the request for an advisory opinion he has an ownership interest in 16 of 550 (2.9%) multifamily developments that MSHDA has financed through the Treasury and HUD programs. Given this relationship and Mr. Hovey's intention of continuing to apply for loans or tax credits through some programs, MSHDA identified several potential conflicts of interest.

To avoid violating the State Ethics Act, MSHDA proposed a series of conflict walls. For the HUD programs, the proposed conflict walls prohibit Ms. Hovey for the duration of her term plus one year from: addressing any matter giving rise to a conflict with Mr. Hovey or any MSHDA staff administering HOME funds or project-based vouchers; making policy decisions on programs that fund Mr. Hovey's housing developments; and overseeing developments financed with HOME funds or project-based vouchers. Ms. Hovey will also be barred from disclosing confidential or nonpublic information. Existing and future MSHDA employees will be made aware of the conflict walls and be required to acknowledge understanding the terms of the conflict walls. MSHDA proposes similar conflict walls for the Department of Treasury's Taxable Bond Program and 9% Tax Credit Program.

### **Public Meeting**

At its December 2, 2021 public meeting, the board considered MSHDA's request for an advisory opinion in distinct parts. This was based on prior board decisions involving conflicts of interest. The board's considerations were to address the issues in the following order: (1) whether the conflicts at issue were continuing, recurring, and pervasive; (2) if so, whether the board should continue its prior approach of holding that such conflicts cannot be cured through abstention, conflict walls, etc.; and (3) whether the proposed conflict walls are sufficient to avoid a violation of the Ethics Act.

#### **Nature and scope of the conflicts**

Board members asked for clarification and additional information on the nature of Mr. Hovey's involvement in MSHDA programs and on the executive director's role in the actual award of loans and credits or supervision of projects funded by MSHDA programs. Acting Executive Director Gary Heidel, Chief Financial Officer Jeffrey Sykes, and Director of Legal Affairs Clarence Stone appeared from MSHDA to present additional information to the board.

MSHDA staff reiterated that Mr. Hovey's current involvement consisted of 14 to 16 loans with MSHDA, and that Mr. Hovey would continue to seek loans through HUD's HOME and Project-Based Voucher Programs and through the Department of Treasury's 9% Tax Credit Program. Acting Executive Director Heidel told the board that the figure of 16 loans is miniscule considering that MSHDA finances roughly \$500 million annually in loans and \$20 million annually in tax credits. According to MSHDA, Mr. Hovey is one of about 20 main or active developers, but other developers have many more projects than he does. MSHDA described the programs that Mr. Hovey would participate in as competitive, but also objective and transparent in how applications are scored.

MSHDA staff described the executive director as having four primary duties, each of which could occupy about one-quarter of the position's time: setting policy, guiding operations, hiring and supervising senior staff, and working with stakeholders. Each executive director is different in management style and the level of involvement in these areas. While an executive director could theoretically drill down into the minutiae of program operations and be involved in award decisions, this was generally not the practice. Acting Executive Director Heidel explained that he is a delegator with an experienced and sophisticated staff, so his involvement in the types of issues giving rise to Ms. Hovey's conflicts was minimal. He conveyed his belief that Ms. Hovey is also a delegator whose strengths lie in strategic planning and relationship building with stakeholders. Given MSHDA's experienced technical staff that handle the award and review of program benefits, the MSHDA representatives said they would expect Ms. Hovey to delegate program-operation activities to technical staff. MSHDA representatives also made clear that there was no direct supervision by the executive director of any staff handling the award and review of program benefits. Acting Executive Director Heidel said that even with this delegation and the existence of the conflict walls, there would be plenty of work and responsibilities for Ms. Hovey.

The MSHDA representatives also discussed program plans and policies and the executive director's role in them. Acting Executive Director Heidel said the Department of Treasury's 9% Tax Credit Program is governed by a plan that is redone every other year, is driven primarily by input from focus groups, and is ultimately approved by the MSHDA board. He referenced MSHDA's sophisticated staff and said he has virtually no involvement in the plan and that Ms. Hovey would be walled-off from creating the plan. With respect to HUD's HOME Program, CFO Sykes said the policies governing that program are based almost exclusively on federal requirements.

As to approvals or decisions on specific projects, the MSHDA representatives said there is no role for the executive director. Direct lending requests are approved by the MSHDA board, and the approval of other projects is based on an objective, publicly available scoring system administered by MSHDA staff.

Turning to whether the identified conflicts were continuing, recurring, and pervasive, board members commented that they were continuing and recurring. On the question of whether the conflicts were pervasive, the board noted the dictionary definition of "pervasive" as "existing in or spreading through every part of something." Chair McClure noted previous board decisions allowing participation in matters of general applicability, such as policymaking, strategy, and liaising with stakeholders, which represent half of the executive director's expected duties. While there could be some impact on administrative and supervisory duties based on Mr. Hovey's involvement in under 3% of MSHDA projects, several board members expressed doubt that this represented a "pervasive" conflict. The board's last opinion discussing the "continuous, recurring, and pervasive" standard, *In re Eagle*, ETH 2009-EA-01, which involved a commissioner with family directly involved in the majority of complaints before the board on which the commissioner served, was referenced. A motion was made and seconded to find that Ms. Hovey's conflicts would not be continuous, recurring, and pervasive. The board voted as follows:

**“YEA” votes:**

Catherine McClure, Chair  
Maha Freij  
Reverend Leslee J. Fritz  
James L. Liggins, Jr.  
Nancy Strole

**“NAY” votes:**

None

**Sufficiency of the proposed conflict walls**

Having determined that identified conflicts were not continuous, recurring, and pervasive, the board then turned to determining whether the proposed conflict walls sufficiently or effectively addressed the potential conflicts and avoided violations of the Ethics Act.

MSHDA staff confirmed, at the request of the board, that there was no direct line of supervision by the executive director of any MSHDA staff handling the award of benefits or supervision of any of the projects under any of the programs in which Mr. Hovey participated. The board asked MSHDA staff about what role Ms. Hovey would have in regulating any competitors of Mr. Hovey’s. MSHDA staff confirmed that Ms. Hovey would be completely walled off from regulating in this area and not just walled off from Mr. Hovey’s projects. Acting Executive Director Heidel again highlighted the objective and transparent way program applications are scored, which made it impossible for Ms. Hovey to negatively affect a competitor.

The board also asked how many people Ms. Hovey’s duties and responsibilities would be delegated to and how difficult the walls would be to manage with staff turnover. MSHDA indicated that the authority to approve matters that Ms. Hovey is walled off from would likely be delegated to one person (e.g., a deputy director or chief of staff). MSHDA also stated that it had no concerns with its ability to manage and enforce the conflict walls—even as affected employees come and go.

Finally, the board asked MSHDA staff to clarify the ability to grant exceptions to the conflict walls and the process for doing so. Director of Legal Affairs Stone said it was not possible to anticipate every scenario that could arise, so it was necessary to establish a process for deviating from the conflict walls in appropriate circumstances. He said MSHDA has used conflict walls in the past and has an ethics committee that reviews such issues on a case-by-case basis after reviewing applicable laws and regulations. Thus, if Mr. Hovey's MSHDA program-participation activities changed, MSHDA would review the conflict walls and adjust them as needed. A motion was made and seconded to find that the proposed conflict walls would effectively address any potential conflicts and avoid a conflict with the State Ethics Act. The board voted as follows:

**"YEA" votes:**

Catherine McClure, Chair  
Maha Freij  
Reverend Leslee J. Fritz  
James L. Liggins, Jr.  
Nancy Strole

**"NAY" votes:**

None

### Conclusion

It is the opinion of the board, therefore, that the conflicts resulting from the business interests of Mr. Hovey are not continuous, recurring, and pervasive conflicts relating to Ms. Hovey's duties and responsibilities as executive director. It is also the opinion of the board that the proposed conflict walls effectively address the potential conflicts so as to avoid a violation of the State Ethics Act.

BY ORDER OF THE BOARD

Dated: December 15, 2021

/s/

John Gnodtke  
Executive Secretary