

Public Housing Repositioning: Wednesday Webinar Series

Repositioning Non-Dwelling Property Overview of Tools and Strategic Tips - 7/27/22

Grace Campion: Good afternoon installment of our Wednesday webinar series. My name is Grace Campion, and I am one of your hosts here today. I'm going to kick us off with a few housekeeping items before we dive into our topic for the day.

Our panelists will share their knowledge with us for the first part of our presentation, and we are reserving the remaining time of our two hours together here for any questions that you may have. And I'll go over quickly the logistics for how you can ask questions. You have two different options. First, in the right-hand navigation panel, you will see a hand shaped icon. If you like to verbally share your question, you can select that icon, and I will unmute your line and you can ask your question.

Secondly -- and this is what I suggest -- [inaudible] your question and type it in the chat box in the lower right-hand panel of your navigation screen. I will read your question aloud in the order that we receive them. And if we are not able to address all of the questions here today, we will follow up after the webinar by email. And just another reminder, all of our webinar participants are muted upon entry. If you would like to notify our team of any technical difficulties, please send us a message in the chat box. Our webinar today is being recorded and it will be available on HUD Exchange. Shortly after the webinar, immediately following there'll be an invitation to complete a quick survey about the webinar. Please share with us any feedback that you might have.

With that, I will now pass the baton over to Jane to kick us off. And. Get us started. Jane, can you unmute your line.

Jane Hornstein: Yep. Grace, thank you. Can you hear me?

Grace Campion: Yep.

Jane Hornstein: Okay. Good. Okay. I want to welcome everybody. Thank you, guys, for joining us today. Today's webinar is going to focus on the repositioning of non-dwelling property. So we're going to go over the tools and the strategic tips. Moving on. Next slide.

So as you can see, this is an ongoing series of various webinars that we've been doing basically since the pandemic started as a way for us to communicate out some guidance on various topics on repositioning. So all of these prior webinars are already posted on HUD Exchange, as will this one. This one will also be recorded and posted, and we hope to do a few more of these in the fall on various topics. Next slide.

Okay. Our goal today is to introduce how to reposition or remove non-dwelling public housing real property -- so vacant land, community and administration -- administrative buildings, maintenance buildings that the housing authorities have purchased over the years to help maintain their properties. And as they're doing various repositioning strategies now, they may no longer need them and they may need to go somewhere else. So the strategies we're going to look at are RAD Section 18, Demolition and Disposition or Part 200 retention. Those will all be discussed today. And next slide.

The presenters are going to be from the department -- from the office of the Special Application Center, the Office of Recapitalization and Field Operations. In the Office of the Special Application Center, or SAC, as we're more commonly known -- James Isaacs, Allison Kappeyne van de Capello and Alex Nassar and Kathy Szybist will be on. On the office of recap, we have John Ardovini and Sarah Molseed. In the Office of Field Operations, it's Dan Esterling and Melissa West. We're going to turn it over to James to introduce what is non-dwelling property.

James Isaacs: Good morning, everybody. Any non-dwelling property that was acquired, operated or maintained with 1937 Act Funds are non-dwelling structures that need to be part of a DOT and you need to seek our approval either through the SAC office or the RAD office. We'll go over that in our slides today.

What do you do if it's -- your non-dwelling structure is not in PIC? You need to work with your local field office -- PIC coach -- to add the buildings. You should do the -- add the buildings and the acreage and the vacant land for your AMP that you're interested in seeking approval. One of the things that we find very common is that your headquarters may not be in your PIC system and you need to make sure that your headquarters, along with any other non-dwelling building that you're interested in getting approval for removal -- that you have it in the system way before the application process is conducted. It'll save you a lot of time. But if a declaration of trust is not recorded, you must record a declaration of trust and that is pursuant to HUD notice 2019-14.

And one last point on this slide is that there's a distinction between non-dwelling units and dwelling -- and non-dwelling property. This presentation today is about non dwelling structures. These structures are stand-alone structures with foundations as compared to non-dwelling units that you'd find in residential buildings. We do not do dispositions of single units within a residential building. You have to -- if you're going to dispose of a piece of a non-dwelling unit, you would have to do it as the entire building. Next slide.

Examples of non-dwelling buildings could be your headquarters -- so, like the central office -- on site management building of a public housing project. These are buildings that support the AMP. Maintenance building sheds with permanent foundations. So these are buildings that have foundations. These are not the kind of buildings that you would buy at a home improvement store, like a Home Depot or a Lowe's, that you can move around, stick them anywhere, or even throw away the garbage. These are buildings with foundations. They can land.

It must -- may have included units demolished under Section 1806, or this is land that was always vacant and maybe had a program purpose or it didn't have a program purpose. PHAs may be using land as a playground, community gardens or some informal type of parking.

Community or neighborhood network buildings, parking lots. Your central office is a non-dwelling building, so make sure it's in your AMP. So just as a reminder. Next slide.

Why reposition your non-dwelling property? PHAs have many reasons for wanting to reposition their property. Maybe it's associated with an AMP that no longer has any ACC units and you want to either sell, convey or provide that non-dwelling to your new project. PHA is repositioning all of its units through RAD or Section 18, and closing out is another reason. PHA may want to replace the non-dwelling with new non-dwelling. So those are your options. Next slide.

So there are different options for repositioning that we will get into the next few slides. You can either reposition your non-dwelling through the RAD program, disposition under Section 18, demolition under Section 18 or retention under Part 200. I do want to remind everybody, if you want to acquire a non-dwelling or you want to acquire property for a non dwelling purpose, you need to work with your local field office, Make sure that you are working with them to acquire this property through the 24 CFR 905 process. And with that, next slide.

Jane Hornstein: Great. Thank you. John, you're the next speaker, so I welcome you to unmute and take it away.

John Ardovini: Thanks. Thanks, James. And good morning or good afternoon, everyone, depending on where you're listening from today. My name is John Ardovini. I'm with HUD's Office of Recapitalization, and I'm here to speak to you about a little program you may have heard of called RAD -- Rental Assistance Demonstration.

So we can also reposition our non-dwelling properties through RAD. And when you think of non-dwelling property and RAD in the same context, what I really want you all to think about is that it could be freestanding property, but that it has to be -- must be contiguous, adjacent or in close proximity to the RAD unit. And what we want to see is that the PHA provides evidence that that non-dwelling property is going to support the RAD unit and that could either be supporting it through direct supportive services for residents or direct administrative or management support for the RAD units.

Now, those non dwelling properties could or may also serve other residents or projects of the PHA, but provided property still primarily serves and supports the RAD units. And so, James covered some of this already. When we think of RAD, a lot of the same applies -- same thing. We're going to see some non-dwelling space in dwelling buildings or parking lots or playgrounds. We'll see non-dwelling structures as James mentioned, sheds with the foundations - - not the stuff you get at Home Depot or Lowes. Community buildings that will be demolished.

We're also going to see the freestanding non-dwelling buildings that support our RAD units. We think of things like community centers or the maintenance building or the management office building. And when we say support, what we're meaning is that the units in the project are supported by the non-dwelling properties. So think of a management office supporting the operations of that converted property. We're not talking about the Central Section 8 Office of the Housing Authority -- thinking about if we're converting to project-based vouchers, the contract

administration for their needs. What we're really talking about is the operational side of it and how it supports the RAD units.

We also look at vacant land or the real property -- things like community gardens or green space that may or may not have been maybe in a floodway or flood zone at one point is now in zone so we can have units in that floodway or flood zone. And great -- a great example or a case study that I think of to kind of set it up with the vacant land is a great opportunity is -- say you have a parcel that is across the street from your RAD converted property. It's partially what it's -- undeveloped. It really doesn't appear to support the RAD units in any way. And so, when we're not supporting the RAD units, what you're going to see is what we call carve outs. It's called a carve out because it's not going to support the RAD unit.

So you'll convert your public housing units through RAD and you may use another action to either dispose of or retain -- as James alluded to, whether it's Section 18 perhaps or 200 -- the non-dwelling property. But you also see carve outs if perhaps the housing authority wants to use the office building for the Central Section 8 administrative office. That's not supporting the RAD mission there. It's supporting the PHA's mission. So that's another reason why we see some of those carve outs. Next slide, please.

So ultimately, it's really going to depend on whether the non-dwelling property is converted through RAD or carved out and disposed of or retained through either Section 18 or Part 200. If we're going to convert it through RAD, it must be transferred to or owned by a RAD entity in most cases. We're also going to see -- when it is converted through RAD, it's going to have to go under RAD use survey. We also see alternative restrictive covenants when something like a transfer of assistance happens, and that's when we take subsidy from one parcel and transfer it to another parcel. So it's put under an alternative restrictive covenant.

When you have the carve out options, you're not going to see the non-dwelling properties go under a RAD use agreement or alternative restrictive covenant. They're going to go through their Part 200 or Section 18 process. Really, this is really something to think about as you're going through the process. What we see a lot of times in the RAD conversion process is thinking of the non-dwelling property at the last minute. Actually, think about it upfront.

And just because historically the non-dwelling property was a part of the AMP or was even a part of the DOT, if it's not supporting the RAD units, maybe it doesn't make sense to convert it with RAD and dispose of it through RAD, repossession through RAD for that non-dwelling property. So it's just something to think about when you're using RAD as a tool to convert either your non dwelling property or your Section nine public housing. Next slide, please.

Grace Champion: Thank you, John. Our next slide, Alex.

Alex Nasser: Can you hear me, Grace?

Grace Champion: Yeah. You're all good.

Alex Nasser: All right. Good. Thanks, John. I'll be talking about Section 18 disposition. This position application can be standalone or it can be part of an application that repositions your -- the disposition can be to an entity controlled by the housing authority, such as an instrumentality of the housing authority. Justification -- 24 CFR 970.17(d). CFR stands for Code of Federal Regulation, for those who don't know.

Property exceeds the needs of the project -- exceeds the needs should be used if remainder of the site or all units are being disposition or disposition is incidental to or doesn't interfere with continued operation of the remaining portion of the project. Incidental generally used for partial declaration of trust releases when the remainder of the project will continue to be public housing. Structure of disposition. It can be a sale at fair market value or it can be a sale via public bid. And both of these usually generate the proceeds. And the last one would be a sale below fair market value. And in this case, the housing authority has to demonstrate commensurate public benefit and use agreement. What's the commensurate public benefit? Bottom line, it has to benefit low-income families and low-income individuals. And who are low-income families and low-income individuals? Those are the families and individuals who make 80 percent or below of the area median income or AMI.

Examples of commensurate public benefits. We have here administration building that will serve Public Housing Authority's central housing choice voucher program. Or it can be a maintenance or community building that will serve repositioning units, or it can be a vacant land that will be developed as first class to-rent units, which means that would expand and redevelop more units than what's existing. If anybody has any questions, please write them down and then get them to the end Q&A and we'll be happy to answer them. Thank you.

Grace Campion: Thank you, Alex. And Allison, I'll invite you to unmute and take us on this next slide.

Allison Kappeyne van de Copello: Thanks guys. I'm Alison Kappeyne with the Special Applications Center and like Alex, I'm also a reviewer of these applications and I'm going to talk specifically about Section 18 demolition -- and HUD approval is required for all demolitions of permanent and non-dwelling structures under Section 18, and approval is not required for the non-permanent accessory structures, i.e. without foundations like James mentioned. Just want to stress this and it should be in PIC, but you also have other options. HUD may also approve demolition of non-dwelling permanent structures as part of a RAD, a choice neighborhood, a voluntary conversion or even a required conversion.

And in Section 18, Demolitions of Non-dwelling Structures, we see three types of justifications under physical locational or functional, and that falls under 24 CFR970.15. And typically, we see physical obsolescence. An example is, say, a gymnasium or a community room building and the housing authority will provide SAC with a rehab cost estimate. And instead of the [52 860B ph] we do non-dwelling obsolescence apps. HUD will do an RS Means cost index and calculate an RS Means TDC that is uniquely created for that-non dwelling building.

So the housing authority would provide us with the building type, the square foot, the height, construction materials so that we can calculate that unique TDC. And this applies again for non-

dwelling buildings, not a non-dwelling unit within a dwelling building. If it is just a non-dwelling unit, that will be part of a removal application for dwelling buildings. Say it's a community room, maybe a two bedroom in a high-rise apartment, that dwelling unit's [fiscal obsolescence review?] will follow that normal TDC with a 52860 B form.

Another reason is locational and that could be that the site is contaminated, it's a Superfund site, it's an environmental hazard, and it would be unsafe and unfit to house people there. Maybe it's a community building or admin building, so the cleanup cost is maybe too high because of that. So we would require -- an example would be a third-party report showing that the mitigation or remediation cost exceeds that cost test.

And lastly, the functional others. This is on a case-by-case basis of what we might request in terms of supportive documents. But one example is a building no longer is needed, space is scattered site, and you have the central warehouse that has all your extra ovens or supplies, and you're doing an asset management review and you no longer need the building. Another would be maybe it's a vacancy or safety risk and the building has not been utilized in a while. So the housing authority wants to sell the property in as-is condition, but wants to demolish it and sell it as vacant land.

Or maybe they're doing a PHA plan management where the demolition of the non-dwelling building is part of their comprehensive redevelopment plan. And so those are just some of the examples there. And one thing I want to note is that capital funds and demolition costs -- is that PHAs -- if they plan to use capital funds to demolish a non-dwelling structure, it must independently comply with all the applicable requirements of 24 CFR 905. The demolition of non-dwelling structures may be an eligible use of capital funds.

However, the same must include that demolition activity in its five-year CSP action plan and comply with all applicable demolition requirements for public housing property, whether it's Davis-Bacon, procurement rules for a demolition contractor, Section three and capped funds cannot be used for demo after a disposition has occurred. So if you're thinking about application types, if the plans to dispose of the vacant land immediately after demolition, it should consider a disposition-only alternative to that the acquiring entity can take care of the demolition, especially if the PHA is planning on using as capital funds to pay for that demo.

But we recognize at HUD that sometimes it's more desirable to sell a vacant property -- vacant land -- and it could be worth more to that acquiring entity, so maybe the PHA will recoup from the demo cost in the sale price.

So the as-is condition is maybe not how you're going to find a buyer for the site and in terms of declaration of trust that will remain in place until the disposition or the retention approval. After the demolition, the vacant land will remain subject to the DOT until it receives the SAC approval. So suppose that they get -- under section 18, I retain the vacant land outside of public housing restrictions, a part 200. You can see notice 2016-20 for more information and until it receives approval to release the DOT, the PHA must use the vacant land for purposes that are consistent with public housing.

So examples include developing public housing units. If a PHA has fair class authority greenspace for a nearby public housing units or development of non-dwelling buildings for public housing families and new development on DOT, dwelling or non-dwelling must comply with 24 CFR 905. So you should work closely with the field office to develop and carry out those plans. I know you've covered a lot of questions for the end, and I will hand this off to Kathy.

Kathy Szybist: Thank you, Alison. Hi, everyone. My name is Kathy Szybist. I'm also with the Special Application Center. And I'm just going to do a quick overview on Part 200 retention.

So Part 200 is an alternative tool to Section 18 disposition that allows us to retain property in their own name outside of the public housing program like Section 18, the end result is a release of the public housing and DOT use restrictions. And like Section 18, it requires a stock application and most of the same SAC submissions of board resolution, environmental review, PHA plan, all of that.

The only reason the Part 200 tool as is implemented through notice 2016-20 exists is because OGC told us a while back that Section 18 requires a true transfer to a third party and doesn't allow a PHA to do a disposition to self. So housing is already can't take property from its federal side to its local side through Section 18. So we created disposition instructions through that notice to allow for a true retention.

Both the justification and the exceptions to compensation are very similar to section 18, in that the justification for retaining a property -- a non-dwelling property -- would be the property is excess to the needs of the housing authority or incidental to the continued use, just as Alex explained for Section 18. And similarly, the reason HUD might grant an exception to the compensation of providing full, fair market value for the property back to HUD is very similar to when HUD finds a commensurate public benefit under Section 18. Principally, it somehow benefits low-income families.

I will stress that Part 200 is not nearly as streamlined as a Section 18 disposition process. It requires a lot more headquarter review and involvement. Although SAC reviews applications, the signature authority for Part 200 is with the Deputy Assistant Secretary of FI. And if you are requesting an exception to fully compensate HUD for HUD's contribution to the property, which is generally 100 percent, HUD treats that as a regulation waiver. So it needs to be signed by the Assistant Secretary of Public Housing Process as a read waiver process and reviewed by OGC. So it takes a lot more effort to get to the end of a Part 200.

As many of you know, there are ways to structure Section 18 dispositions so that the housing authority retains full control after the third-party transfer. So many times, housing authorities already have their own nonprofits or can create one pretty easily and can transfer public housing property, including non-dwelling property to that entity under Section 18, which is, again, a lot more streamlined. So bottom line, given the kind of similarities and extra hurdles for Part 200, unless a housing authority has a very compelling reason to retain property in its own name -- for instance, local property taxes, possibly pressure from a local government or board or residents to keep property in the PHA name -- it should fully consider Section 18 disposition as the vehicle, the tool to reposition non-dwelling property.

I also want to mention for both Part 200 and Section 18, these tools are available outside of a repositioning effort. A housing authority might have a very legitimate reason to retain or dispose of some excess land. So a housing authority that's never repositioned a unit in its whole existence who is not closing out -- maybe they've always had this 37 acres of land under DOT because it was acquired in 1960 and they're only using 17 acres -- well, they could dispose or retain of the other 20 acres and do some kind of new development with developmental partners and better utilize that property for low-income families and the community. So I do want to mention that that this non-dwelling property repositioning extends beyond repositioning and close out efforts of other units and actions. With that, I will pass over the baton.

Grace Champion: I believe, Melissa. Thanks, Cathy.

Melissa West: So I'm Melissa West, and I'm a program analyst in the Office of Field Operations. And I'm just going to spend a few minutes here talking about some areas for consideration when you're repositioning non-dwelling public housing property that you might want to give just a little bit more time and attention and maybe up-front planning, too.

And so, the first of those areas is environmental review, which also encompasses some historic preservation consideration. So completing an environmental review, of course, is familiar to all of you. But what we sometimes see, maybe even a little bit disproportionately anecdotally, is when non-dwelling public housing property is being repositioned, sometimes the field office will see environmental reviews coming into the field office that might -- sometimes right off the bat, it shows that the housing authority might be thinking, oh, this is just non-dwelling property, this is just vacant land, this is just a non-dwelling building and maybe assume that it requires a lower level of environmental review.

So we just wanted to start by noting that environmental review under Part 58 or in very limited circumstances, Part 50, is always required before the SAC will approve a Section 18 or a Part 200 application. It's also, of course, required under RAD conversions. And for it -- specifically for inventory removal actions under Section 18, just to note that you will always need to complete at least a minimum of what we call a CEST level review. That just stands for categorical exclusions, subject to the laws and authorities at 24 CFR 58.5.

And so basically what that means in a little bit more of our informal language is that some of you are familiar with a level of environmental review where activities are exempt and they're mostly just administrative activities. And then kind of next level up is categorically excluded, not subject to the laws and authorities at 58.5. And we just want to highlight here that both of those levels of review are too low for repositioning non-dwelling properties.

So moving on just a little bit to talk about one particular area that can really throw a wrench in your timing plan if you haven't thought about it upfront, which is part of that environmental review, and that is considering Section 106 of the National Historic Preservation Act and whether that might apply to any of your non-dwelling property. So again, just anecdotally working in the field, we've seen that sometimes it's our non-dwelling buildings that might more frequently be eligible for listed for the historic register.

So a recent example of that in our map network was a non-dwelling public housing building that was used as a community space, but it was actually a home that was built prior to 1972. So it has to be at least 50 years old and probably you or I just driving past never would have thought that that was a historic property. But the Colorado SHPO and HUD determined that it was. And so, it just requires some extra considerations, planning -- in that particular case required recording of a historic preservation covenant.

So that's just one example. A lot of times we see administrative buildings might be in a historic building downtown, too. And again, it's just important to note that this consideration applies not only to properties that are listed on a historic records register, but also for those that are just eligible for the historic registers.

Okay. I think we can move on to the next slide. So the other thing we want to talk about is a little bit about timing and planning and some closeout considerations. So oftentimes, when we're disposing of our non-dwelling property or repositioning our non-dwelling property, it's because a housing authority is closing out its public housing program. Now, as Kathy just mentioned, there are options for repositioning your non-dwelling public housing property even if you're not closing out, but closeout takes into account some specific considerations.

So as we note here, first of all, you cannot close out -- and by close out we mean terminate your ACP -- until all of your non dwelling property is repositioned. So again, when we're thinking about planning on the front end, it's very important that the housing authority has a plan in place and thinks about if we're going to reposition our units through RAD, for example, how -- our dwelling units -- how do we want to reposition our non-dwelling public housing property, maybe our admin building, maybe our vacant land? And so, when we're when we're thinking about that, we're just noting that just repositioning your units isn't going to get you to close out. In order to get to close out, you have to make sure that you have first reposition all of your non-dwelling properties and then after that there is a process that takes place.

So the process for going through and actually closing out requires you submit a form to HUD and it's called your notification of close out, the 5837. Some of you may be familiar with that. And this is a process that can potentially take several of several years. And some of the reasons for that is that part of the closeout process includes activities such as resolution of any outstanding legal matters, closing out all your grants. There's a period of performance for all of your open grants and ultimately towards the end there's an audit, reconciliation of your funds, so on and so forth. So just noting that if you are at the tail end of the process and your plan is to close out your program, make sure that you have a plan in place for your non-dwelling property and that you know that you're still going to have some of these required actions that you'll take in close coordination with your field office to actually close out your program.

A couple of other notes on this particular slide. One is that if you happen to be transferring or consolidating your program with another housing authority under PIH Notice 2014-24 of the process set forth there, you will also be transferring your non-dwelling property to that receiving PHA. And another consideration is that if you get any proceeds from your non-dwelling property disposition, how are you going to use those proceeds. Here there are their particular requirements

that those proceeds be used to serve low-income families. And we just want to note that in the case of a public housing only agency, if you are closing out your public housing program, you really need to have a plan in place for how to use those proceeds because your options are going to be very limited if you're public housing only and if you're closing out your program.

So just some considerations there. You can refer to notice 2020-23 for more information on the use of proceeds and some of those eligible uses. A couple -- just a couple of other things I want to note real quickly. As James mentioned earlier, you can best expedite your process for ensuring that your non-dwelling property is removed as efficiently as possible if you make sure that you have all of that non-dwelling property already in PIC prior to your submission for an inventory removal request.

And the best advice that I can give in working on closeouts is just make sure that you're communicating with your field office. Try to respond to requests for information timely. Make sure you bring any questions you have to them. And just again, really focusing on the front end, on the planning process to -- the goal of this presentation is to make sure that when we're thinking about repositioning, that we're not forgetting repositioning our non-dwelling public housing property. And so, make sure it's in PIC, make sure that you have a plan and we can flip over to the next slide here for a second to talk a little bit about considerations for that planning process.

So we're not going to walk through every detail of this chart, but generally the goal of this chart is just showing that if you're -- if you're going -- you have multiple options for different goals that you're trying to achieve for your non-dwelling property when you're going to reposition it. And as you can see from a lot of the yeses on this chart -- and even the no, unless option -- for any of these very common scenarios or most common scenarios, you have more than one option. And what we really want our housing authorities to think about on the front end is what are my goals? What are my goals for this non-dwelling property so that you pick the option that best meets those goals.

And that will be really fact-specific. Do you have a voucher program? Are you going to still need admin space? Maybe you want to dispose of your central office building to your nonprofit arm, but maybe you still have a voucher program and you'll want to lease back part of that office space to run your voucher program. Maybe you're closing out in all you're going to have is the RAD project, and so maybe it makes sense for your non-dwelling property that's in close proximity to your RAD project to continue supporting that project. So maybe you'll bring it through RAD.

So the goal of this chart is just to really show how many different options you have, the different considerations for each of those options, and just in hopes that you choose the best fit for yourself on the front end. This is a great kind of reference slide to look back at when you when you think about what your repositioning is and kind of compare some of the different options. And I think we can hop to the next slide here.

And this last slide is just consolidating some of the resources that we've mentioned throughout the rest of the presentation. First and foremost, our repositioning web page. That's a great

jumping off point to a plethora of repositioning resources, both what was included here and then many more. The SAC web page likewise really gives insight to the process for any applications and processes that go through the SAC.

And then some of the individual notices that we mentioned here -- disposition notice, RAD notice, close out notice, proceeds notice. I'm not sure if the first one is on here, but as I mentioned, that's 2020-23. So we just encourage you to take a look at each of these resources.

And I think that brings us up to the question portion. So we'll turn it back over there.

Grace Champion: Thank you for our wonderful presenters here today. We are about 45 minutes into our webinar and we're ready to transition to questions and answers. So I'll just give a quick reminder on logistics. Our preference is that you use the chat feature to let us know your question and we'll read those out and then we'll respond to them. And if you want to use the Q&A feature, you can also drop your question in that side of your right-hand navigation pane.

So without further ado, we had three questions come in during the presentation, so I'm going to go ahead and get started with the first one that came in. I'm going to read it out loud, and I'm also going to put it into us into the chat box so you can read it.

All right. Our first question is, can you define commensurate public benefit? What standards does SAC use to determine if enough low-income families are being helped to justify a certain reduction in price? So who's from the HUD team -- Alex, would you like to take this one on?

Alex Nasser: Yeah. James, do you want me to answer that? I can take care of that.

Grace Champion: Sorry. I can't hear you, Alex.

Alex Nasser: Maybe --

Kathy Szybist: I can --

Alex Nasser: Maybe there's something wrong

Kathy Szybist: yeah. I can take a shot at it. This is Kathy from the SAC. On commensurate public benefit, it really is a case-by-case analysis. There's no percentage. I know -- for instance, RAD, their definition of affordable housing purposes use of percentage of low-income families being served.

We do not use a percentage. We take multiple things into consideration. Definitely if the use is going to be non-dwelling rather than dwelling, it has to primarily support low-income families. Again, not to say it can't serve a few members of the general community, but it does need to primarily support low-income families. We will also consider things like, well, what's the value of the property? And is the housing authority getting any proceeds back?

How much time is left on the DOT? Maybe only four years or less under the use restriction. So we take multiple things into consideration in determining if there's sufficient commensurate public benefit. Similarly, the length of time you're willing to commit. So if the property isn't worth much, there's not much time left on the DOT, maybe it's not a 30-year use restriction, but if there's -- if the property is worth a lot and there's a lot of time left on the use restriction, we're really going to look for that 30 years through an enforceable covenant. So I'm not sure that helps, but it's really case-by-case. My best advice is to provide a very sufficient detailed narrative of detailing the commensurate public benefit and the use of the property and how it will serve and support low-income families after the disposition or retention.

James Isaacs: I would further invite housing authorities who are contemplating disposing of this -- of their non-dwelling -- to a local municipality in which they're going to try to justify this as a less than fair market transaction to call the SAC to get a read on it before they commit to a disposition of less than fair market. Because usually public purposes that serve the general public typically do not pass muster as a measure of public benefit. Because back to the statement that Kathy made, it must serve primarily low-income families.

Grace Champion: Thank you, James and Kathy, for that. We're going to move on to our next question and I'll just ask my panelists. Please put yourself on mute unless you're talking. All right. Our next question I'm going to put it in the chat here is would at lease for ground mounted solar panels on vacant land require a Section 18 application?

Kath Szybist: Again, that's a "it depends" answer. We've had. I think that --

Jane Hornstein: No. Kathy? Yes. It does require a Section 18 application. If it's mounted in the ground and it takes up ground, that would have been accessible to the residents, it needs to go through Section 18 and the residents need to be consulted as part of that process.

Grace Champion: Okay. Thank you, Jane. All right. We're going to move on to question number three. Going to throw this is into the chat here so folks can read it. The next question is, I think this was mentioned, but just wanting to confirm -- do any vacant parcels or non-dwelling buildings need to be in PIC first in order to submit them for a SAC -- in order to submit applications to SAC? I'll open that up.

Melissa: This is Melissa. I think I was one of the ones who mentioned that. But you definitely want to have all of your public housing property in PIC. And what we find out is disproportionately a lot of times the non-dwelling public housing property never ended up in PIC. The acreage isn't in there. The vacant land isn't in there. The non-dwelling buildings aren't. So that's one of those pre-planning items that that's one of the first things I would do. Hop off the call and if you're thinking of repositioning non-dwelling public housing property, go look and pink. If it's not in there, go ahead and start that process because that's one of the things that will just slow you down once you actually apply if it's not yet done.

James Isaacs: I would like to emphasize that HUD notice 2019-14 requires you to have a property that's acquired, maintained, or that went under mod rehab to be under a DOT. So you must do it anyway, so you should do it anyway. And like Melissa says, it will slow you down if

you do not put it in and we discover you're asking to remove something that's not in the system. And please do not use the thing in section 5 that says buildings not in PIC that would just screech everything to a halt. So yes. You should have everything in PIC prior to submitting.

Grace Campion: All right. Thank you. We have one more. Number four. We put this into the chat and read it out. The question is, can you please clarify what you mean by closeout -- closing out of an existing contract or closing out of having public housing at all? That is the question.

I'll leave that.

Melissa West: So this is Melissa. I talked about the closeout slide. So in the context of this presentation, when we were talking about closeout, we were talking about if you are closing out your public housing program, which basically means terminating your ACP. So there is a whole process that we call closeout. And one of the things that it requires is that you have repositioned or removed all of your public housing property from inventory.

And part of the goal of this presentation is to make sure that our PHAs are thinking about their non-dwelling property. Because a lot of times we have conversations and we just hear, oh, we have 50 units or we have 249 units and this is what we want to do with our units. And then we end up into the weeds, down the disposition or down the repositioning path. And all of a sudden, it's like, oh, well, what are we going to do with our admin building? Or We have these ten acres of land that we're next to scattered sites that have been sold off or something. So when about the process of closing out your entire public housing program, which culminates in termination of your public housing ACP.

Grace Campion: Excellent. That is all of the questions that we received so far. I'll invite -- give us 30 seconds here. For all of our participants, if you have any questions, please throw them in the chat box and we'll read them out. And while we're waiting on that, I'll open the floor to our HUD presenters if there's anything you want to add in here.

James Isaacs: While we're waiting for questions from the group, I do want to remind folks that resident consultation usually is required because if you're disposing of a non-dwelling building, the regulation 24 CFR 970.9 says that you need to consult with residents affected by the proposed removal action. So if you're talking about a community building that residents have been using -- they've been relying on it, they enjoy meeting there -- and then you decide that for whatever good reason, you no longer want this building, you want to dispose of it, or you're going to do something good that's like, let's knock this down. Let's build this other thing that would -- in your mind -- be a benefit to the residents, you do still need to do a resident consultation because they're being affected by the removal of this building. So you do need that resident consultation and make sure the resident consultation is prior to the board resolution.

Melissa West: And I would just add to James's point there that that includes vacant land. So vacant land also requires rest and consultation.

And one other -- thank you. Oh, sorry. I was just going to say one other note here -- one other thing to consider while we're waiting to see if there are any more questions. I just inadvertently left this out for my notes when I was running through things to think about ahead of time.

If you -- particularly if you decide to reposition your non dwelling public housing property through a separate process -- one of the things you might need to do is potentially have that property resurveyed. You might need to legally subdivide it in a different way. So let's say you're having a RAD conversion and you decide that you're your admin building next door, you want it to go to your profit instead as opposed to converting with the with the RAD property. Sometimes when these properties are side by side or contiguous and if you're going to be selling them off to two different entities, you might need to go through that process of obtaining a new survey, legally subdividing them, so on and so forth.

So that's just another really ahead of time thing that you want to think about. You don't want to get halfway through your RAD conversion and you're on the concept call and you say, oh, we want to we want the admin building to go somewhere else or to someone else and then face months of delays in trying to deal with the legal property, potential for subdividing that sort of thing. So that's just another one of the front-end considerations.

Grace Campion: All right. Two more questions come in, so I'll get started on question number five here. I'm going to again throw it into our chat server so everyone can read it and I read it out loud. Question number five. If there is land that is already being used as a public park, improved and managed by the city, is there a path for disposing of this land for less than fair market value and giving it to city ownership?

Kathy Szybist: I mean not really. If the city -- if it's under DOT and it was acquired with 1937 Act funds, even if it's not under DOT, but if it was acquired with 1937 Act funds and its public housing property, if there's no grandfathering in or common law use, if the city has been using it as a park, probably incorrectly for years, there's no streamlined path to allow the city to acquire or continue to retain it for its general public use.

Jane Hornstein: And the city can pay for it. And we would encourage you to sell the land to the city and still do a Section 18 application for that.

Kathy Szybist: Right. Go ahead.

Jane Hornstein: Yeah. But they can't -- there's no commensurate public benefit for it. But we can do it either at a fair value or -- but note that when they do the appraisal for the value of the land, it should be appraised at as vacant land, not with the park on it if the city paid for the park. If it's part of an overall RAD deal, it can be included as part of a RAD deal. And if it's -- if it's something else, then no. I'm not sure if that answered the question.

Grace Campion: Great. I think --

James Isaacs: One of the things that Kathy alluded to is that somehow housing authorities have been allowing municipalities to use their land as public parks and sometimes improperly. I would

suggest to you that any time that somebody is using your property more than 364 days, that you must put it under a ground lease and unless it's for a commensurate public benefit, you need to submit an application and put them under a lease and submit an application for Section 18 to have a lease on this property.

Grace Champion: All right. Thank you. We've got one more question here that came in and going to put it in the chat and read it out.

All right. Our next question is, what if you have vacant land that you want to build a community building on that would benefit your public housing and tenants and the land is currently public housing? Do you have to have RAD tenant approval, public housing tenant approval or

Kathy Szybist: So I think there, using -- John and Jane chime in here or anyone else -- but you have to make a decision whether you want to transfer that property as part of the RAD transaction and put it under a radius agreement.

James Isaacs: That's right.

Kathy Szybist: And the RAD office and the field office will work together to confirm that it primarily supports the RAD units. Again, as John said, as others have said, primarily is the key term there. So it can be used for a Section 18 reposition property or even existing public housing families as well. But it needs to primarily support the RAD families -- the RAD units -- if you want to include it in the RAD transaction.

And as Melissa said, this is about planning. This is about choices. The housing authority also has other choices for that property. So it really depends on how the housing authority wants to structure the property that control the money, everything.

Sarah Molseed: And this is Sarah Molseed. I would add, if you are already done with the RAD transaction -- so, the RAD transaction has already gone through approval and so you're -- this is coming down the line to support. More than that, I think supporting the low-income residents of the RAD transactions could be considered a commensurate public benefit. But at that point it would need to go under Part 200 or Section 18 because we can't go back and release something under RAD after you've already converted it. So the timing is going to be key in how to answer that question too

Grace Champion: Here. We don't have any other questions at this moment. And I want to just open the floor to our HUD presenters. Is there any final responses to the questions or notes before we wrap things up?

Okay. All right. Thank you to all of our -- we've got one more question here that just slipped in. So thanks. Since we have the time, I will add it here. This question is specifically for Allison. So I'm going to throw it in the chat and read it out. Allison, can you please discuss and clarify when CAP funds can and cannot be used in Section 18?

Allison Kappeyne van de Copello: Yes. So if -- and please chime in anyone else from SAC here -- but if the PHA wants to use capped funds, they need to make sure that it's included in their five-year CFP action plans and that it's complying with 24 CFR 905. And capped funds can be used for the demo as long as it occurs prior to disposition. So say you have a demo dispo application, you demolish the building, you use capped funds to demo it, it's in the action plan, it's following everything under 24 CFR 905 and then you're disposing of vacant land. That can be done.

You cannot use capped funds if you are planning to dispose of the land and then you struck a deal with the acquiring entity and said, hey, we'll help you demo it if you buy this property. So in that case, the capped funds cannot be used, or if you didn't include the funds in that action plan ahead of time. So it needs to be recorded. I don't know if that answers their question specifically. Jane Hornstein: Okay. One of the one of the quickest ways to know is if the DOT is still in place and you -- at that point in time, you can still use capped funds, but if it's no longer public housing property, it can't be -- no capped funds can be used on it.

Melissa West: Yeah. That's a good trigger.

Grace Champion: Thank you, Allison and Jane. We have one more question that came in here. So question number eight. I'm putting it in the chat. Let's see. Let me check real quick, everybody.

All right. Question number eight is, if the only non-dwelling units we have left are administrative buildings and all of our public housing units are vacant with no residents, do we still need resident approval? And if so, from who?

Kathy Szybist: So in that instance, if there are no impacted residents like individuals, then you might not need it. We defer to the housing authority to determine who is an impacted resident and who is not. But what you do need is resident RAB approval. But again, if there are no residents in the RAB -- the Resident Advisory Board has been dismantled because there are no residents -- then it would just be NA. But if for somehow there's still a RAB, even if there's no impact to residents, you would still need to consult with that RAB.

James Isaacs: I would just add that it's not a resident approval, it's a resident consultation. You don't you don't need their approval. You just need to consult with them, hear what they have to say, see if you can incorporate their suggestions or not. If it is practical and it is desirable, you can incorporate their comments and their suggestions. But it isn't a resident approval.

Kathy Szybist: Right. But I think the point is, if there are no units, then there might not be any residents. So if there are no impacted residents, you obviously don't have to consult with them. But again, maybe there's an existing resident advisory board that still exists. Just like even if you remove all your public housing units, if you haven't closed out your public housing program, you still might have to submit an annual PHA plan until the close out occurs. So if you still have an RAB on the books and any members in that for some reason you would still need to consult with them.

Melissa West: And I would also say it's very rare that there -- because it seems like a very specific case where there's absolutely no public housing units and it's just the non-dwelling buildings for admin. In the case of the examples of the vacant land in getting resident consultation, say the vacant land is the last thing remaining in that development or AMP, you would go to the Resident Advisory Board for that consultation.

Grace Campion: All right. Grace again. That wraps up our questions. So I'm going to move into close out mode here today and I'll go through a few quick logistics and then I'll ask you to sort of formally close this out. Thank you for joining us today, everyone.

We will be posting the PowerPoint presentation and the recording on how to HUD Exchange in the coming week. You will be able to access everything there. We'll also send out an email notification, just to remind you when it's posted. And our last request for each person today who participated is to fill out a quick survey at the end of this session. It'll pop up on your screen as you're exiting the WebEx system. Please click on it and fill it out quickly. We love feedback and we would just ask you to take a minute to let us know how today went.

Jane, I'm going to kick it over to you now for a final wrap up.

Jane Hornstein: So thank you. I want to thank all our presenters today. You guys did a great job and I want to thank everybody for joining us today. I think we had pretty good attendance. And again, this will be posted on HUD Exchange, as Grace mentioned.

So please, if you have other questions, feel free to send them to SAC TA and hud.gov. We are -- it helps guide us if we know what questions you have, either specifically or more important, whatever -- what's on your mind. It helps us to try to tailor our policies and our guidance for you. So we'd love to get questions. So please continue to ask and thank you for your time today. I appreciate it. Thanks, everybody.

Grace Campion: Thank you. Have a good day.

(END)