



Puyallup Nation Housing Authority

"A Drug & Alcohol Free Housing Program"



Puyallup Nation Housing Authority

Written Testimony of Annette Bryan, Executive Director To Senate Committee on Indian Affairs

Oversight Hearing Identifying Barriers to Indian Housing Development and Finding Solutions

April 10, 2013

Good afternoon, Chairwoman Cantwell, Vice-Chairman Barrasso, and distinguished members of the Senate Committee on Indian Affairs. My name is Annette Bryan, and I am the Executive Director of the Puyallup Nation Housing Authority (PNHA) and have been at PNHA since 2004, first as a member of the Board of Commissioners and then as Executive Director.

On behalf of the Puyallup Tribe and the Puyallup Nation Housing Authority, I would like to thank the Chair, Vice-Chair, and the Committee Members for holding this hearing and for establishing the reauthorization of the Native American Housing and Self-Determination Act (NAHASDA) as a priority legislative item for the 113th Congress. I am honored to testify at today's hearing concerning barriers to providing housing in Indian Country, and in support of the reauthorization of NAHASDA. Ensuring adequate housing is paramount to the quality of life in Indian Country, and this hearing will help us break down existing barriers so we can move forward on this important task. Furthermore, this hearing will lay the groundwork needed to enact a reauthorization for NAHASDA that builds upon its successes.

We would like to thank the Chairwoman for her efforts to provide resources to meet the severe needs for housing and other assistance in Indian Country. The housing needs for the Puyallup Tribe, and across Indian country, are extreme. The NAHASDA has provided PNHA with tools to make notable progress in meeting the housing needs of our Tribe, but there is still a significant unmet need that is far too large. Reauthorization of the NAHASDA provides a necessary opportunity to strengthen the Act by increasing its flexibility and efficiency. I will discuss a number of barriers to providing effective housing assistance in Indian Country, many of which can be addressed through amendments in the reauthorization process and funding in accordance with the dire housing needs in Indian Country. First, I will provide some background about our Tribe and PNHA.

The Puyallup Tribe and the Puyallup Nation Housing Authority

The Puyallup Tribe is a federally recognized tribe located in the Southern Puget Sound area of Washington State. In our aboriginal language, we are known as the S'Puyalupubsh,

meaning “generous and welcoming behavior to all people (friends and strangers) who enter our lands.” Our people lived in villages from the foothills of Mount Tacoma, along the rivers and creeks to the shores of Puget Sound. Our villages were scattered throughout the many islands, prairies and rich valley country of the Pacific Northwest. Historians often noted because of the abundance of salmon and shellfish that “When the tides were out, the table was spread.”

Our people lived here for thousands of years existing by the bountiful gifts provided by the Creator. Our Mother, Mount Tacoma, provided the water that supplied our salmon. We were fed by the abundance of nature’s gifts: Salmon, shellfish, wild game, roots and berries. The cedar trees provided our homes, utensils, clothing and transportation. All of these gifts are part of our rich cultural heritage we have today. Our environment was rich in the wealth of natural resources, providing all our needs, allowing us to live healthy, happy lives. There were no worries of where the next meal would come from or where we would sleep. There was the freedom to practice our religion, train our children and take care of our elders.

Today we are known as the Puyallup Tribe of Indians. Times have changed and the conditions we live in have changed dramatically, but the Puyallup Tribe endures. The membership of the Tribe has grown considerably in recent years, and is now more than 4,000 people. A majority of tribal members live in the Puget Sound region; however there are members spread across the country. Tribal members play vital roles in many aspects of life in the Puget Sound region. Adult members work as attorneys and fisherman, doctors and construction workers. Some are entrepreneurs who operate successful businesses. Many members are active in sharing the rich Puyallup culture with the community through pow wows, art exhibits and other activities. Yet there are still many – too many – of our people who are in poverty. As a result many do not have access to safe, sanitary, and adequate housing.

Recognizing this need, the Tribe established the Puyallup Nation Housing Authority in 1977. PNHA is the tribally designated housing entity of the Puyallup Tribe. It carries out the low-income housing program for the Puyallup Tribe, and is the recipient of the Tribe’s Indian Housing Block Grant under the NAHASDA. Our mission is to provide assistance and opportunities for eligible and qualified Native Americans within the Puyallup Tribe’s service area to obtain decent, safe, sanitary and affordable housing.

PNHA was established to provide decent, safe, sanitary and affordable housing for low-income tribal members and other Indians in our service area. We endeavor to alleviate the acute shortage of decent, safe and sanitary dwellings in our area through the construction of new homes and the alteration and repair of existing homes. We also manage and maintain residential properties that are owned by the Tribe or the PNHA to provide housing to members and the Indian community. Our staff of 18 prides itself in our work, but we strive every day to do what we can to meet the enormous housing needs we face.

Through NAHASDA, PNHA offers assistance to eligible participants through our Home Ownership Opportunity program, opportunities to live in low rent apartment or homes that are owned by the Tribe or PNHA, and our rental assistance program. Our Home Ownership Opportunity Program is a lease-to-own opportunity for eligible applicants. It is successful in

several aspects. It not only provides safe and sanitary housing for the family or individual, but also the pride, stability and responsibility that comes with being a home owner.

Unfortunately, many of our members and other intended beneficiaries are not eligible for our Home Ownership Opportunity Program. Thus, we have many people seeking on-reservation low income rental units. We manage 59 units that are available for low rent living. These include our 27 apartments and 22 townhouses along with our newly constructed ARRA-funded 10-unit Longhouse project. Significantly, our Phase I Longhouse project was recognized by the U.S. Green Building Council as its LEED for Homes 2012 Project of the Year. It is also one of six projects worldwide honored with a SEED (Social Economic Environmental Design) Award for Excellence in Public Interest Design. It also earned the rare LEED Platinum rating, the highest building certification for leadership in energy and environmental design. We are particularly proud of our Longhouse project and are pleased to offer it to our members as a housing opportunity. Phase II Longhouse will open in May, providing 10 additional units.

Because it is important to us to make sure that our elders have a safe, comfortable place to live, we also manage our Elders Healthy Home and eight Elders units. In the effort to care for our elders, we also provide assistance specifically through our Elders' Repair and Renovation Program.

Our combined units that we manage or provide rental or homebuyer assistance to result in approximately 215 families and individuals being served.

NAHASDA marks a significant step towards self-determination in the housing arena. This monumental Act has spawned much improvement and progress in the Indian housing arena. It has been a great vehicle for tribes generally and for the PNHA specifically to develop housing to meet the needs of tribal members and other Indians in its service area. If NAHASDA is not reauthorized, PNHA would not be able to continue to operate its critically needed programs and services.

NAHASDA is a success. Nonetheless, significant need remains. Greater flexibility and efficiencies are needed. Amendment through reauthorization is not enough, however, for tribes and TDHEs to truly meet the needs of their service populations: NAHASDA must also be funded in accordance with the dire housing needs in Indian country. The specific barriers we face in carrying our mission to develop Indian housing and provide assistance for eligible persons to obtain decent, safe, sanitary and affordable housing are set forth below. The lack of sufficient funding is foremost among the barriers to effectively provide housing in Indian country.

Barrier No. 1 - Insufficient Funding

Since the passage of NAHASDA, the PNHA has developed a broad range of housing services, using the flexibility in the Act to meet the needs of our service population in the most efficient manner possible. We have developed several programs to utilize the tools in NAHASDA intended to facilitate homeownership and provide affordable housing. As set forth above, we have leveraged our IHBG funding with a Title VI Loan Guaranty to construct 22 units

of affordable housing serving low-income Puyallup Tribal members and other Indians. We have developed a rental assistance voucher program, to assist with rental payments. This program currently serves up to 40 households per year, although this program is being reduced due to budget cuts. We have also established a down payment assistance program to eligible Indian recipients with loans or mortgages to improve existing homes or purchase or construct their own new off reservation homes. PNHA also provides financial and homebuyer counseling to its program participants. All of these programs are designed to assist low income members, but even with these benefits, only a small fraction of the families on our waiting list are financially capable of participating in these programs.

As required by NAHASDA, PNHA maintains waiting lists for the various programs it offers. Currently, there are 240 low-income households on all of our waiting lists: Homeownership Opportunity = 31; Low Rent Program = 123; Rental Assistance Voucher Program = 86. While these numbers may not look alarming, we can only provide new housing as it becomes available and we are currently 98% occupied.

To adequately meet the need for affordable housing for the low-income population we serve, we estimate that we would need to construct an additional 240 units. The levels of funding in our current IHBG do not provide us with the resources to construct anywhere near that number of units. To compound the funding problem, for each unit we construct with NAHASDA funds, we take on the responsibility to maintain and operate that unit. The NAHASDA block grant does not provide any additional funds for maintenance and operations. Thus, the more units we build and operate, the more of our annual block grant is taken up by maintenance and operation costs. We are rapidly approaching the point where we will not be able to afford to construct or acquire any more units because our grant funds need to be spent to maintain and operate those we already have. Yet that stock of housing is woefully insufficient to meet the overwhelming need.

Further, the annual Indian Housing Block Grant appropriations under NAHASDA have not kept pace with inflation, and in real dollars the last few years of appropriations represent a significant decrease from the amounts initially appropriated in the early years of NAHASDA. The amounts adopted over the past few years have essentially remained flat, while both the need and the costs of serving that need have increased. The automatic sequester cuts have further impacted our operations, and continued cuts will have significant adverse consequences. The annual funding we currently have is nowhere near sufficient to meet the substantial need for housing services. The cuts would result in overwhelming unmet need. Further, such cuts would require us to reduce services and/or staff. In the current economy, these scenarios will be devastating to our people.

We are also aware of Congress' concern with the significant amounts of "unexpended" funds in the NAHASDA pipeline. While some tribes and TDHEs may have had difficulties spending down funds, we note that there are numerous bureaucratic and logistical barriers to quick spend down. NAIHC and other tribes/TDHEs have pledged assistance to those tribes, and NAIHC has set up a working group to further explore the issue and develop solutions. We note that, overall, the unexpended funds problem involves a small number of tribes, and that overall the NAHASDA block grant program has a very efficient spend-down rate. We also note that the

Puyallup Nation Housing Authority has been able to spend its funds down in an efficient and effective manner.

The annual IHBG appropriation is the budget we rely on to provide services year-in and year-out, any proposed cuts will impact us as an organization and our constituents in a dramatic way. Tribes and TDHEs need a longer term sustainable appropriation for housing, one that would at the very least keep pace with inflation.

Solution: PNHA requests that, at a minimum, Congress appropriate sufficient funds in the annual block grant to keep up with inflation. That amount for this Fiscal Year would be approximately \$875 million, with subsequent annual increases, to meet current inflation and to keep pace with future inflation.

Barrier No. 2 – 30% Maximum Rent Rule

When an Indian-specific housing program was created through NAHASDA, certain aspects of the prior 1937 Housing Act were retained. One of these was the requirement that tribes may charge no more for rents than 30% of the adjusted annual income of households. NAHASDA Section 203(a), 25 U.S.C. §4133(a).

While this appears to be a common sense measure to ensure that affordable housing remains affordable, it is a concept that has not transferred over well to the NAHASDA framework. First and foremost, under the 1937 Act Public Housing program, there is a specific line item for maintenance and operation of managed premises. As noted above, there is no such appropriation under NAHASDA. Oftentimes the only funds that are available for maintenance and operations come from the rents that tribes and TDHEs are able to charge. But there are many low-income clients whose annual adjusted income (a term defined by the statute) is at or near zero, and therefore the rents that the tribe or TDHE can charge is zero or de minimis. Under the 30% rule, tribes and TDHEs are prohibited from charging a base administrative fee if that fee is in excess of 30% of income. Further, the work required to certify and recertify the annual adjusted income of each household in order to make appropriate adjustments to rent is substantial and burdensome.

Moreover, the 30% rule applies where the tribe or TDHE is providing a rental or homebuyer subsidy to a tribal member in a unit owned or managed by another landlord. Thus, where a tribe or TDHE decides to undertake a rental assistance voucher program – like PNHA – we are required to provide a subsidy in a sufficient amount to ensure that the tenant or homebuyer is paying no more than 30% of their income. We are prohibited from providing a flat voucher amount (such as a payment of \$200 per month per household in the program), which would enable us to spread our resources among more households.

Solution: PNHA supports an amendment to NAHASDA that would eliminate or modify the application of the 30% maximum rent rule to Indian housing programs.

Barrier No. 3 – Redundancy in Administrative Requirements Where Additional Sources of Funds are Leveraged

One of the responses to the insufficient amounts of funding under the NAHASDA IHBG appropriations is to blend additional sources of funding into construction projects, which PNHA and many other tribal programs have done successfully.

Yet this blending of funds results in additional bureaucratic requirements, which are often redundant, and which therefore incur additional costs for administration – meaning less money to spend on housing construction. There are two main areas where we see this problem: environmental review and payment of prevailing wage rates.

Environmental Review. One of the innovations of NAHASDA was to allow tribes to exercise environmental review requirements that would otherwise be carried out by HUD. NAHASDA Section 105, 25 U.S.C. §4115. For those tribes, like Puyallup, that have the capacity in-house to conduct environmental review, it is both an exercise of the Tribe’s sovereignty as well as administratively more efficient to have such reviews carried out by the Tribe. Under the NAHASDA regulations, where a tribe does assume environmental review responsibilities, it must do so in accordance with the applicable HUD environmental review regulations at 24 CFR parts 50 and 58. PNHA has worked with the Tribe to tool up for and carry out environmental reviews consistent with the HUD-mandated process.

However, because our housing is built on and involves leasing of trust lands, there are in a number of cases additional, overlapping, and redundant environmental review requirements imposed by the Bureau of Indian Affairs (in exercising their authority to review and approve residential leases on trust lands). Further, when PNHA leverages its NAHASDA funds by using grant funds from other federal agencies (such as USDA – Rural Development), that agency’s environmental review requirements will also apply. Thus, PNHA in such circumstances will be required to undertake three different environmental reviews – all of which are intended to meet the same federal statutory requirements under the National Environmental Policy Act – because each federal agency has its own guidelines and procedures. The resulting administrative and legal costs in doing so takes funds away from constructing houses.

Solution: PNHA supports a proposal, which we hope to see included as an amendment in the reauthorization process, that would deem a tribe to have satisfied all applicable environmental review requirements that might apply to a multiple-funding sourced project if the tribe satisfactorily completed the applicable HUD environmental review process.

Prevailing Wage Rates. NAHASDA, like many other federal statutes, requires that funding recipients pay laborers and other workers a minimum wage based on the prevailing wages in the locale where the project is being developed or operated. Such provisions are generally referred to as the Davis-Bacon Acts, which were a series of federal laws establishing such prevailing wage requirements on projects using federal funds. Those wage rates are

determined by the Department of Labor (and, for certain activities related to operation of housing projects, by HUD).

Another important innovation of NAHASDA was to allow tribes to develop and apply their own prevailing wage rates as the standard minimum wages to be paid to laborers and other workers on development and operations. NAHASDA Section 104(b)(3), 25 U.S.C. §4114(b)(3). The Puyallup Tribe has exercised its sovereign authority under this section and has developed its own prevailing wage rates, which apply to PNHA projects.

However, as with the environmental review requirements I just discussed, where a tribe uses multiple federal funding sources on a project, the Davis-Bacon requirements will apply to those other sources of funds – even if the tribally determined prevailing wage rates apply to the use of NAHASDA funds. Under such circumstances, the tribal housing program will have to separately track the expenditure of each set of funds and set up two distinct payrolls (and payment rates) for work done under each funding source. Doing so involves a substantial administrative and accounting burden, transferring costs from building houses to managing accounts.

Solution: As with the environmental review issue, PNHA supports a proposal, which we hope to see included as an amendment in the reauthorization process, that would authorize a tribe to apply the tribally-determined prevailing wage rate to all sources of funds used in a project that was funded in part by NAHASDA block grant funding.

Barrier No. 4 – Delays in HUD Response to Requests for Approvals or Waivers

The HUD Office of Native American Programs (ONAP) has been a strong and reliable partner for the PNHA. In particular, the Northwest ONAP has been very helpful in providing technical assistance, advice, and oversight. But ONAP, like many federal agencies, is often short-staffed and underfunded, and in a number of instances may not be able to respond in a timely manner to certain requests.

Where this situation has the potential to become a barrier is in those areas where – under the statute – HUD is given the authority to approve waivers of certain statutory requirements or timelines. For example, NAHASDA requires IHBG recipients to enter into Local Cooperation Agreements with local governments to provide for services in exchange for payments in lieu of taxes or user fees. In some instances, however, those local governments are uncooperative or simply unwilling to enter into such agreements. NAHASDA, therefore, gives tribes the right to ask HUD for a waiver of the Local Cooperation Agreement requirement if the tribe has made “a good faith effort” to enter into such an agreement and agrees to make payments in lieu of taxes. NAHASDA Section 101(c), 25 U.S.C. §4111(c).

This provision, however, contains no timeline for HUD to act on such a waiver request. Yet, unless a tribe obtains an agreement or a waiver, it is unable to expend NAHASDA funds on a project in that jurisdiction. This is particularly a barrier for tribes like Puyallup that are located in areas with overlapping jurisdictions with other local governments. Other areas under the statute where HUD has similar waiver or other approval authority, but no enforceable timelines,

include environmental review requirements, submission of Indian Housing Plans and response to comments on draft monitoring reports.

Solution: PNHA supports a series of NAHASDA amendments that would establish a timeline for each of these approval processes. In addition, similar to the process involved in the approval of gaming compacts under the Indian Gaming Regulatory Act, these proposals would state that if HUD was unable to meet the applicable deadline, that the request for waiver or other approval would be “deemed approved.”

Barrier No. 5 – Lack of Flexibility in Total Development Cost (TDC) Limits Undermines Ability to Do Green Building

One avenue that PNHA has explored through its NAHASDA funds is the development of energy efficient, “green” building designs, recently completing an “elder healthy home” demonstration project and a multi-unit low-income housing development with solar heating and other green design features. It is important for green buildings to be easier to construct or pursue. One step Congress could take to facilitate green building would be to expressly authorize a waiver or greater flexibility around the “moderate design” standards that have been promulgated in the NAHASDA regulations when it comes to green building. The NAHASDA regulations interpret the “affordable housing” requirements of the Act to require that homes be built within strict cost limits, known as “total development costs” (“TDC”). While this limitation is generally a good idea, it does not take into account that incorporating green building design elements increases the upfront development cost of construction, while ultimately saving money (for both the tribe and for the tenant/homebuyer). PNHA’s own recent experience bears this out: PNHA had to use funding other than NAHASDA to complete its elder healthy home because it could not meet the TDC limits – even though upon completion the home would cost less to maintain and less to heat than conventionally-built homes.

Solution: PNHA would support an effort by Congress to add language to NAHASDA that would require exemption from or greater flexibility around the “moderate design” and TDC limitations when a tribe or TDHE is incorporating energy efficient components in building construction. Again, the upcoming reauthorization of NAHASDA would provide an appropriate vehicle for such an amendment.

Barrier No. 6 – Disruption in Section 184 Loan Guaranty Program

We join with other tribes in expressing our dismay regarding the oversight that resulted in the Section 184 program exhausting its resources. However, we applaud Congress in quickly resolving this matter by providing more than \$12 million for the program in the recently enacted continuing appropriations act for FY 2013. This funding level is a little more than double previous funding levels and will allow the program to help – according to HUD – as many as 3,500 Native American families to either purchase a home or refinance between now and the end of FY 2013.

Solution: While we are grateful for the increase in funding for the Section 184 program, both Congress and the Administration must ensure that such an oversight does not happen again.

Conclusion

NAHASDA represents great progress toward the goal of self-determination and has provided tribes and TDHEs with important tools for meeting the vast housing needs in Indian Country. However, amendments to NAHASDA are needed to increase flexibility and efficiencies in ways that will enable tribes and TDHEs to do even more in this arena. We need the flexibility to identify and target our local needs, we need to be free of micromanagement and overlapping and duplicative oversight requirements and we need adequate funding. The need is there in Indian Country and we look forward to working with the Committee on the best ways to address it.

For more information contact:

Annette Bryan, Executive Director
Puyallup Nation Housing Authority
253-573-7956, fax 253-572-9262
Email: annette.bryan@puyalluptribe.com