

**Prepared Statement of Rosalie Gokee, Council Member  
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin  
to the  
U.S. House Financial Services Committee, Housing and Insurance Subcommittee  
Field Hearing on “NAHASDA: 20 years On”**

**July 21, 2017**

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Boozhoo everyone. My name is Rosalie Gokee, and I am a Council Member on the Governing Board of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin. I would like to say miigwech to Chairman Duffy and committee members for coming to Lac Courte Oreilles to hold this hearing in regards to NAHASDA.

**Background on the Lac Courte Oreilles Band  
of Lake Superior Chippewa Indians of Wisconsin**

The Lac Courte Oreilles Reservation was established by the 1854 Treaty with the Chippewa, an agreement between the United States and the Mississippi and Lake Superior Bands of the Ojibwe Tribe, 10 Stat. 1109, Sept. 30, 1854. On March 1, 1873, the Secretary of the Department of the Interior transmitted the selections of land for the Lac Courte Oreilles Reservation in fulfillment of the 1854 Treaty. Currently the Tribe is composed of approximately 8000 members of which 2,425 reside within the reservation boundaries.

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians is organized pursuant to the Indian Reorganization Act of 1934 (“IRA”), 25 U.S.C. 461 *et. seq.* The Lac Courte Oreilles Tribal Governing Board is the governing body of the Tribe pursuant to Article III, §1 of the Tribe’s Constitution. The Tribe’s seven-member council is elected by popular vote of the membership. The chief officer, the Tribal Chairman, is selected from among the council members pursuant to Article III, § 3 of the Lac Courte Oreilles Constitution.

The Tribe was organized pursuant to the IRA / Lac Courte Oreilles Constitution in 1966 for the express purpose to conserve tribal property, develop its human and natural resources, enjoy the rights of self-government and improve the general quality of life for its membership. The Lac Courte Oreilles Tribal Government functions similarly to the U.S. Government in both range of services and obligation to its citizens:

- Elected Government Leadership
- Administrative Infrastructure
- Law, Judiciary Process, Enforcement
- Fiscal Management – Financial Controls
- Housing, Land Use, Development
- Public Utilities – Roads, Water, Sewer
- Health Care
- Education
- Economic Development

- Retirement, Pension and Insurance Administration
- Social Services
- Environmental Protection
- Culture and Art
- Public Safety Services - Law Enforcement, Conservation Wardens, Fire Department
- Intergovernmental Agreements

The Tribe operates a tribally-designated housing entity which has a Director, and a Housing Board of Commissioners that act in an advisory capacity. The mission of the Lac Courte Oreilles Housing Authority is to shelter and protect their people, and help their community prosper.

### **Treaty and Trust Responsibility for Adequate Housing**

In the Treaties of 1825, 1826, 1837, 1842, 1847 and 1854, the tribes reserved inherent rights including, the right to engage in traditional customs and practices, the right to self-government, the right to hunt, fish and gather in the areas ceded to the United States (ceded territories), and the right for adequate housing. These rights are not concepts that can be given or bestowed upon a people at the whims of policy. The Creator bestowed cultural distinctiveness or the concept of sovereignty upon the Ojibwe people, and the people have held this notion since antiquity. This is embedded within its Treaties with the federal government. (See: *Treaty with the Chippewa*, 7 Stat. 591 (1842), Article II: The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy. The usual privileges of occupancy have been defined as – aboriginal rights, Indian rights, customary rights, usufructuary rights, or permissive occupancy and have uniformly been found to include all inherent rights including the right to adequate housing. *Lac Courte Oreilles v. Voigt (LCO I)*, 700 F. 2d 341 (7th Cir. 1983); *Mille Lacs Band v. State of Minnesota (Mille Lacs II)*, 861 F. Supp. 784, 840 (D. Minn. 1994); *Shoshone v. United States*, 299 U.S. 476, 496 (1937); *United States v. Minnesota*, 466 F. Supp. 1382, 1385 (D. Minn. 1977); *White Mountain Apache Tribe of Arizona v. U.S.*, 26 Cl. Ct. 446, 464 (July 14, 1992) (holding that under a fair and honorable dealings analysis the treaty gives rise to a federal obligation to provide food, clothing, housing, health care, and education)).

In the Treaty of 1854, the federal government established the Lac Courte Oreilles Indian Reservation, and induced the various Bands to forego their existing homes in the ceded territories by the promise of assistance in building new ones on the reservation. Despite the pivotal role of housing promises in the negotiations for the 1854 Treaty, the federal government has never successfully provided housing assistance to the Ojibwe Bands. Many Ojibwe people have lived in substandard housing since the establishment of the reservations in the 1854 Treaty. For over one hundred years, the federal government has recognized that housing conditions in Indian Country threaten Indian peoples' health and their ability to educate their children. The federal government, however, has failed to adhere to its treaty promises by not providing adequate housing to the Ojibwe Bands.

Safe, decent, and adequate housing in the form of funds for building, repairs, renovations, and related infrastructure is a treaty right, and forms part of the federal trust and fiduciary responsibility of the federal government as established in its Treaties. This principle is expressly

recognized in 25 U.S.C. § 4101 in which Congress found that: (1) the Federal Government has a responsibility to promote the general welfare of the Nation; (a) by using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control, (b) by working to ensure a thriving national economy and a strong private housing market, and (c) by developing effective partnerships among the Federal Government, State, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities; (2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people; (3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people; (4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition; (5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status; (6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government shall work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and (7) Federal assistance to meet these responsibilities shall be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 et seq.).

Historical records reveal a persistent but ultimately ineffective effort on the part of the federal government to improve housing conditions for tribes. These same records suggest that Congress's willingness to dedicate resources to Indian housing has been, at best, insufficient and haphazard. As Congress continues to address the ongoing housing crisis experienced by many tribes, policymakers must consider the complete history of the federal Indian housing obligation. See: *A Discovery of Sorts: Reexamining the Origins of the Federal Indian Housing Obligation*, 18 Harv. BlackLetter L.J. 211, 211-12 (2002).

### **Profile of Indian Country**

There are 567 federally-recognized Indian tribes in the United States. Despite progress over the last few decades, many tribal communities continue to suffer from some of the highest unemployment and poverty rates in the United States. Historically, Native Americans in the United States have experienced higher rates of substandard housing and overcrowded homes than other demographics.

The U.S. Census Bureau reported in the 2015 American Community Survey that American Indians and Alaska Natives were almost twice as likely to live in poverty as the rest of the population—26.6 percent compared with 14.7 percent. The median income for an American Indian Alaska Native household is 31% less than the national average (\$38,530 versus \$55,775)

In addition, overcrowding, substandard housing, and homelessness are far more common in Native American communities. In January of this year, the Department of Housing and Urban Development (HUD) published an updated housing needs assessment. According to the assessment, 5.6 percent of homes on Native American lands lacked complete plumbing and 6.6 percent lacked complete kitchens. These are nearly four times than the national average, which saw rates of 1.3 percent and 1.7 percent, respectively. The assessment found that 12 percent of tribal homes lacked sufficient heating.

The assessment also highlighted the issue of overcrowded homes in Indian Country, finding that 15.9 percent of tribal homes were overcrowded, compared to only 2.2 percent of homes nationally. The assessment concluded that to alleviate the substandard and overcrowded homes in Indian Country, 68,000 new units need to be built.

Since NAHASDA was enacted, tribes have built over 37,000 new units according to HUD. However, as the IHBG appropriations have remained level for a number of years, inflation has diminished the purchasing power of those dollars, and new unit construction has diminished as tribes focus their efforts on unit rehabilitation. While averaging over 2,400 new unit construction between FY2007 and 2010, new unit construction has dropped in recent years with only 2,000 new units between 2011 and 2014, and HUD estimating less than 1,000 new units in future years as tribes maintain existing housing stock.

### **NAHASDA Reauthorization Efforts**

The last NAHASDA reauthorization was enacted in 2008, and that authorization expired at the end of fiscal year 2013. This is the fourth year now that the program has been left unauthorized, and our membership continues to grow more concerned as discussions in Washington, D.C. focus on cutting spending and eliminating unauthorized programs.

While NAHASDA may be currently unauthorized, the United States' trust and treaty responsibilities towards Native peoples remain and will not go away. The members of this Committee know these commitments well and Lac Courte Oreilles is very appreciative of all your efforts in supporting tribal housing programs and tribal self-determination.

We recognize the leadership that the House and the Financial Services Committee has shown by passing a NAHASDA reauthorization in both the 113<sup>th</sup> and 114<sup>th</sup> Congress. We look forward to working with you this year to again work towards finalizing a reauthorization that can be signed into law.

### **H.R. 360 – 114<sup>th</sup> Congress (2015-2016)**

The Lac Courte Oreilles Tribe strongly supports the re-authorization of NAHASDA, and we supported H.R. 360 – 114<sup>th</sup> Congress (2015-2016), with only one primary concern. We understand the rules of the House of Representatives normally require authorizations to include a specific total amount, rather than “such sums as necessary” language. Accordingly, H.R. 360 would cap the authorization of NAHASDA at \$650 million dollars per year. Since NAHASDA was enacted 20 years ago, tribal programs have received between \$600 and \$650 million annually. However, when factoring for inflation, funding of \$650 million only provides tribal housing programs about 2/3 in the purchasing power they received 20 years ago. In addition to this the Lac Courte Oreilles Tribe would ask that tribes be allowed to increase their FCAS to the true number of housing stock they own and operate as low income housing rental units. We also encourage Congress to ask HUD to provide a report that would accurately state the real operation and maintenance costs so that a starting appropriations number could be identified.

The Lac Courte Oreilles Tribe would request language that allows for inflationary and fixed costs increases over the authorization time period. We believe the increase in authority and appropriations is justified as Indian Country continues to see rates of substandard housing and overcrowded homes well in excess of the national average. A HUD needs assessment published in January of this year inaccurately indicated that 68,000 new units are needed in Indian Country but actually that number is closer to a published HUD ONAP shortage number of 290,000 units. As the ability of tribes to develop new housing units has diminished in the last few years due to inflation, the problem cannot be solved by limiting funding to current levels.

Despite that primary concern, H.R. 360 largely improved and built upon existing NAHASDA provisions. Title I of the bill placed deadlines on HUD to act upon waiver requests, and included language that would greatly simplify NEPA reviews for tribal projects. Because tribal projects routinely combine multiple federal sources of funding, compliance with multiple environmental review processes wastes time and resources, so any effort to reduce those burdens, while still complying with the spirit of NEPA is appreciated in Indian Country. Title I also required a study to streamline Indian Housing Plans, and allow for multi-year housing plans. This provision builds upon self-determination policies and is in line with other successful self-governance policies used by the Bureau of Indian Affairs and Indian Health Service.

Title II of H.R. 360 included multiple provisions that provided flexibility to tribal housing programs. This includes providing tribes a greater ability to use Native-owned companies in construction, which helps spur job creation in these communities as well. Another provision allowed tribes more flexibility in determining minimum rent requirements, recognizing tribes’ rights to self-governance. Title II also provided greater flexibility for converting a tribal family from renter to a homebuyer, and other helpful leasing provisions. Finally, Title II provided tribal housing programs access to sanitation facilities funding from the Indian Health Service.

Title III contains the 5-year reauthorization and incorporated the 3x language developed through negotiated rulemaking into the NAHASDA statute. The Lac Courte Oreilles Tribe does not believe that is necessary, as negotiated rulemaking allows for periodic updates to the rules as needed to address new circumstances. While Lac Courte Oreilles Tribe does not believe it is needed, we do appreciate Congress simply adopting the current policy as decided through negotiated rulemaking with tribes.

Title IV streamlined the audit process by ensuring that HUD is timely in its communications with tribes who are working to correct insufficiencies found in their programs.

Title V included language making the tribal HUD-VASH program permanent, which the LCOHA supports. A bipartisan bill in the Senate, S. 1333 115<sup>th</sup> Congress (2017 – 2018); Tribal-HUD VASH Act of 2017, includes some additional language that would address a few of the problems identified in the demonstration phase of tribal HUD-VASH implementation. Title V also included a reauthorization of the 184 loan guarantee program.

Title VII of H.R. 360 would establish a demonstration project providing Tribes a new method of leveraging their NAHASDA funding with private investment. We believe any efforts to expand access to capital and getting new private investments in Indian Country is worth looking into and tribes who are willing to utilize the demonstration program should have that option.

Additionally, the Lac Courte Oreilles Tribe would encourage Congress to further amend NAHASDA to allow for Tribal Housing programs to have full access to all of the services provided by Federal Supply Sources, which is not the case with the current language, similar to other Tribal programs. The Lac Courte Oreilles Tribe would also ask that any provisions related to compliance with Davis Bacon labor standards be waived for expenditures related to NAHASDA funds.

### **Concerns with the Administration's FY 2018 Budget Proposal**

While the signing statement could be dismissed as not fully understanding the background of federal Indian law, the Administration's FY 2018 funding proposals is much more concerning. In short, the Lac Courte Oreilles Tribe believes that the budget, if enacted, would devastate tribal housing programs across the country.

The budget provides substantial cuts or completely eliminates the Community Development Block Grant at HUD, the CDFI Fund at Treasury, and Rural Development programs at the USDA.

The proposed budget would also cut the Indian Housing Block Grant to \$600 million, which is essentially the same level of funding tribal housing programs received in 1996. However adjusting for inflation, the proposal represents a cut of about one-third compared to 1996 funding levels.

The HUD tribal housing needs assessment released in January showed that tribes have rates of substandard housing and overcrowded homes well in excess of the national average. The report indicated that 68,000 new units are needed in Indian Country. As the ability of tribes to develop new housing units has diminished in the last few years due to inflation, the problem cannot be compounded by the severe program funding cuts proposed in the Administration's FY 2018 budget.

The Lac Courte Oreilles Tribe asks that members of this Committee, particularly those who also sit on the Appropriations Committee, support adequate funding of the Indian Housing Block Grant and other tribal housing programs. Funding the IHBG at \$900 million would provide tribes relatively the same purchasing power it had in 1996 and the Lac Courte Oreilles Tribe requests no less than \$700 million for FY 2018. Congress should also reject the proposed cuts to the other programs listed above, as they provide tribes additional resources for their housing programs. Funding tribal housing programs not only fulfills Congressional trust and treaty responsibilities, but does so in a way that spurs economic development, creates jobs and builds credit in tribal communities.