



U.S. Department of Housing and Urban Development
Federal Office Building
Northwest Office of Native American Programs
909 First Avenue, Suite 300, OAPI
Seattle, WA 98104-1000

December 9, 2016

Honorable Robert Kelly, Jr.
Chairman
Nooksack Indian Tribe
P. O. Box 157
Deming, WA 98244

Dear Chairman Kelly:

**SUBJECT: FY 2017 Indian Housing Plan
Final Notice of Non-Compliance and Right to Appeal**

In letters to the Nooksack Indian Tribe (Tribe), dated November 10, 2016, and November 15, 2016, (copies enclosed), you were notified that the Tribe's FY 2017 Indian Housing Plan (IHP) is not in compliance with the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA). The letters identified the reasons for noncompliance, the modifications necessary to meet the submission requirements, and established December 1, 2016, as the deadline to submit a revised IHP. One of the reasons for its non-compliance was because the required certifications were not signed. HUD notified you that the IHP had to be signed by an authorized official of the Tribe. However, given the lack of a quorum of the Nooksack Tribal Council, as explained in the U.S. Department of Interior's letter to you on October 17, 2016 (enclosed), HUD stated that the Tribe had to submit documentation to show that the individual signing the IHP had the delegated authority to do so on behalf of the Tribe.

On November 30, 2016, the Tribe provided a revised IHP, which included the additional information requested and also included the IHP certifications signed by you. While the revisions to the IHP addressed all other deficiencies identified in our November 15, 2016 letter, the IHP is still not in compliance with NAHASDA because no documentation has been provided to establish that you are authorized to sign the IHP certifications on behalf of the Tribe.

In its October 17, 2016 letter to you, the Department of Interior indicated that four Tribal Council members' terms expired on March 24, 2016. Because the Tribe's Constitution and Bylaws require five elected Tribal Council members in order to constitute a quorum, the Tribal Council has been operating without a quorum. Accordingly, the Department of Interior has not recognized any actions taken by the Tribal Council after March 24, 2016. In particular, the Department of Interior refused to recognize actions taken by you and two other Tribal Council members to enjoin the authority of the Northwest Intertribal Court System.

In a subsequent letter sent to you on November 14, 2016, the Department of Interior notified you that it would also not recognize the results of a referendum election purporting to disenroll tribal members. On November 18, 2016, the U.S. Department of Health and Human

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Services, relying on the Department of Interior's determination, followed suit and notified you that it would not recognize the disenrollment of tribal members due to the lack of a Tribal Council quorum. It also informed you that health care services had to continue to be provided by the Tribe to enrolled tribal members.

HUD defers to the U.S. Department of Interior regarding questions involving tribal governance and, more specifically, questions about the authority of individuals to act on behalf of an Indian tribe. Given the lack of a quorum of the Nooksack Tribal Council, and the Department of Interior's position to not recognize any actions taken by the Tribal Council after March 24, 2016, you are not currently authorized by the Tribal Council to sign certifications, or any other documents, on behalf of the Tribe.

Based on the information discussed above, HUD will not be able to find the Tribe's 2017 IHP in compliance with NAHASDA requirements until it receives adequate documentation demonstrating that the Department of Interior has determined that you have the authority to sign IHP certifications on behalf of the Tribe. In other words, we are requesting documentation demonstrating that you are recognized by the Federal government to act as Chairman and sign certifications on behalf of the Tribe, despite the lack of a functioning Tribal Council.

You have the right to appeal this determination of non-compliance in accordance with the appeal process found at 24 CFR § 1000.234 within 30 days of receipt of this letter. Failure to respond to this letter and satisfactorily address the non-compliance issue may jeopardize receipt of your FY 2017 Indian Housing Block Grant under NAHASDA.

If you have any questions, please contact Bryce Harper, Grants Evaluation Specialist, at (206) 220-6219 or myself at (206) 220-6204.

Sincerely,

(b)(6)

Thomas H. Carney
Director
Grants Management Division

Enclosures

cc: Ms. Katrice Romero
Housing Director



U.S. Department of Housing and Urban Development
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Northwest Office of Native American Programs
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Seattle, WA 98104-1000

November 15, 2016

Honorable Robert Kelly, Jr.
Chairman
Nooksack Indian Tribe
P. O. Box 157
Deming, WA 98244

Dear Chairman Kelly:

SUBJECT: FFY 2017 Indian Housing Plan
1st Notice of Non-Compliance

We have reviewed your Indian Housing Plan (IHP) for completeness and compliance with applicable regulatory requirements. Our review indicates additional information is needed in the following sections to complete this review:

Section 1: Cover Page

- **Authorized Submitter**
 - Lines 25, the IHP was not signed. In order for the IHP to be in compliance with the IHBG program requirements, it must be executed by an authorized official of the tribe. The acceptability of the signature will be subject to the requirements outlined in the separate NwONAP correspondence dated November 10, 2016 (enclosed).

Section 3

- **2017-1: Operation of 1937 ACT Housing**
 - Is this activity for operation and maintenance of both the Low Rent (LR) and Mutual Help (MH) units? If just MH then you would need separate activity to address the 1937 Act LR units.
 - Line 1.6, please add a reference to low income/eligible Native Americans residing in both the LR? and MH units per the question above.
 - Line 1.9 Planned and Actual Outputs: You have 47 units identified however FCAS shows 32 units (7 LR and 25 MH). This is the same general issue as last year, please verify numbers (including inclusion of the 37 Act LR units).
 - Also, if not already accomplished please directly correspond with the formula center to assure you receive equitable treatment for any MH units still eligible to be in the formula but that have been dropped from the "official" FCAS rolls.
- **2017-2: Development & Acquisition**
 - Clarify if this activity is for separate acquisition of land and of existing units.

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- If separate, you need to segregate the Land Acquisition from the Acquisition of Existing Housing and add an additional program. The Eligible Activity Number Land Acquisition would be (6) Acquisition of Land for Rental Housing Development and the Output would be Acres.
 - If just acquiring homes on reasonably sized plots, then remove the land acquisition portion of this activity from the narrative.
 - Include "Native American" in description of families.
 - The types and level of assistance needs to include general information about size and location of targeted land [i.e. Deming area, 10 acres or size (3BDR, 12 units, etc.)] of units being acquired as applicable.
- 2017-4: Housing Management
 - Add a reference to "low-income/eligible Native Americans" as part of the who will be assisted line section (4.6).
- 2017-5: Operation of NAHASDA Units
 - Line 5.6 – references LR units, if 1937 Act units are being operated they must be included under activity 2017-1 (Operation of 1937 Act Housing). In addition, please add a reference to "low-income/eligible Native Americans" in this section.
- 2017-6: Crime Prevention
 - Add a reference to "low-income/eligible Native Americans" as part of the who will be assisted line section (6.6).
- 2017-7: Rehab/Modernization of 1937 Act Units
 - Add a reference to "low-income/eligible Native Americans" as part of the who will be assisted line section (7.6).
 - Line 7.7 The types and level of assistance section needs to be expanded to describe the approximate scope of the activity and the estimated cost per unit to the extent known, based on past experience. If it will depend on inspection results, then so state.
- 2017-8: Down Payment Assistance +
 - Add a reference to "eligible Native Americans" as part of the who will be assisted line section (8.6).

Section 5

- (2) Uses of Funding - has an activity "2016-9 ROSS Program" but no corresponding program description in Section 3. Please add or subtract activity as appropriate.

Section 6

- (1) Useful Life/Affordability Period - The useful life language needs to be expanded to cover all your proposed activities including the proposed

acquisition of units and the existing NAHASDA and 1937 Act Low Rent units.

Based on these issues, we cannot find your IHP in compliance with the requirements of Section 102 of the Native American Housing and Self-Determination Act of 1996 and 24 CFR 1000. Please submit the above information to complete your plan by December 1, 2016. Funds cannot be provided until a plan is submitted that is in compliance with NAHASDA and the final rule.

If you have any questions, please contact Bryce Harper Grants Evaluation Specialist, at (206) 220-6219 or myself at (206) 220-6204.

Sincerely,

(b)(6)

Thomas H. Carney
Director
Grants Management Division

Enclosure
cc: Ms. Katrice Romero
Housing Director



Region X

U.S. Department of Housing and Urban Development
Northwest Office of Native American Programs

November 10, 2016

Honorable Robert Kelly, Jr.
Chairman
Nooksack Indian Tribe
P.O. Box 157
Deming, WA 98244

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Chairman Kelly:

The Northwest Office of Native American Programs (NwONAP) is in receipt of an October 17, 2016, correspondence (enclosed) to you from the Principal Deputy Assistant Secretary – Indian Affairs of the Department of Interior (DOI). The correspondence indicates that the DOI will not recognize any actions of the Nooksack Indian Tribal Council after March 24, 2016, due to a lack of a quorum. As a result, it has become necessary for NwONAP to verify the validity of two documents related to the Indian Housing Block Grant (IHBG) program that were received by NwONAP after March 24, 2016.

The two documents in question are:

- The FFY-16 IHBG Funding Approval/Agreement (form HUD-52734-B) – This Agreement (enclosed) was signed on April 11, 2016, by Rick D. George as the Vice Chairman of the Tribe.
- The FFY-17 Indian Housing Plan (IHP) – The IHP was received on October 17, 2016, and is currently under review. However, Line 25, Section 1: Cover Page, of the IHP was not signed. In order for the IHP to be in compliance with the IHBG program requirements, it must be executed by an authorized official of the Tribe. Due to the lack of a quorum raised in the DOI correspondence a signature by the Tribal Chairman or other Tribal Councilmember on the 2017 IHP is not sufficient to render the IHP acceptable. Any additional identified deficiencies in the FFY-17 IHP will be outlined in a separate correspondence to the Tribe once the IHP review has been completed.

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In order to verify the validity of these documents, the following information must be submitted for review by HUD's legal staff:

- A legal opinion from the Tribal attorney that the individual that signed the FFY-16 Funding approval Agreement noted above has the delegated authority to execute the document and that at present there is an individual with delegated authority required to execute the FFY-17 IHP in order to commit the Tribe to the statutory and regulatory requirements of the IHBG program.
- Documentation to support that the individuals executing these documents had the legal authority to do so. This documentation should also include the individuals' terms in office.

The requested information must be submitted no later than December 1, 2016, to ensure the continued processing of the FFY-17 IHP and the availability of funds under the IHBG program. If you have any questions, please contact either Tom Carney, Director, Grants Management Division, at (206) 220-6204 or Michael Farrell, Attorney Advisor, at 206-220-5166.

Sincerely,

(b)(6)

Ken Bowring
Administrator

Enclosure(s)

cc: Ms. Katrice Romero
Housing Director