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MEMORANDUM

February 27, 2017

TO: Housing Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

Re: *NCAI Winter Executive Council: HUD Tribal Housing and Housing Infrastructure Environmental Review Process Listening Session*

On February 13–16, 2017, the National Congress of American Indians (NCAI) hosted its Winter Executive Council Session in Washington, DC. The Session covered an array of pressing issues facing Indian Country during the 115th Congress, including telecommunications expansion, the 2018 Farm Bill, tax reform, and the Temporary Assistance for Needy Families (TANF) program. We report here on the Department of Housing and Urban Development (HUD) Tribal Housing and Housing Infrastructure Environmental Review Process listening session held on Tuesday, February 14, 2017. The listening session was officiated by Hilary Atkin, Senior Environmental Specialist and Clearance Officer in the Office of Native American Programs, and Heidi Frechette, Deputy Assistant Secretary for Native American Programs at HUD.

Background

In March 2014, the Government Accountability Office (GAO) issued a report titled “Native American Housing: Additional Actions Needed to Better Support Tribal Efforts,” in which it highlights the challenges facing Indian tribes in providing affordable housing to tribal members through HUD-administered programs.¹ Based on the GAO report, an interagency workgroup was convened to examine ways in which environmental review requirements could be coordinated across federal agencies to more efficiently manage Indian housing development projects. The process included extensive briefing, consultation, and listening sessions with tribes and tribally-designated housing entities (TDHEs). The workgroup’s “Coordinated Environmental Review Process: Final Report” ultimately presented twelve recommendations:

- (1) Incorporate environmental review documents by reference;

¹ GAO Report No. 14-255, “Native American Housing: Additional Actions Needed to Better Support Tribal Efforts” (March 2014), available at <http://www.gao.gov/assets/670/662063.pdf>.

- (2) Develop common categorical exclusions;
- (3) Address resource deficiencies at the Bureau of Indian Affairs;
- (4) Provide training for agency staff;
- (5) Provide training for tribes;
- (6) Continue review of related environmental laws and authorities to identify opportunities for greater efficiencies;
- (7) Create regional consortiums;
- (8) Explore the development of an interagency environmental review automated tool;
- (9) Explore HUD-specific regulatory and policy improvements;
- (10) Create more predictable funding mechanisms;
- (11) Establish an on-going environmental review interagency workgroup; and
- (12) Explore expanding the scope of this effort.

A copy of the Final Report is available at:

<https://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf>.

NCAI Listening Session

Ms. Atkin opened the listening session by highlighting what she believes are the workgroup's top two recommendations for improving the administration and efficiency of Indian housing environmental review processes. First, she encouraged agencies to incorporate environmental review documents by reference through the use of interagency Memorandum of Understanding (MOU). She explained that MOUs can serve as a means of promoting greater uniformity across federal policies while still enabling agencies to retain certain distinct requirements.

Listening session participants encouraged HUD to require that federal agencies designate a lead agency for Indian housing projects involving two or more agencies or MOUs. Participants noted that this would provide greater clarity to tribes and TDHEs on how to move forward in meeting the multifaceted regulatory requirements of a complicated housing development project like a subdivision or mixed-use property. Ms. Atkin expressed support for this proposal, stating that agencies could develop a centralized review process around the agency with the strictest requirements for a certain project. She noted that the agencies could essentially create "categorical approvals" for certain activities pursuant to the lead agency's requirements. Ms. Atkin requested information on specific regulatory requirements that may impede inter-agency coordination efforts in Indian Country.

Second, Ms. Atkin emphasized the need to develop a master checklist of agency requirements to increase predictability and avoid redundancy. She stated that a "one-stop shop" on federal environmental review requirements and related funding opportunities would streamline the process for tribes and TDHEs. In response to questions from participants, Ms. Atkin explained that the master checklist would collect agency requirements in one place for ease of use, but would not result in any substantive changes to the regulations. She stated that the identification of conflicting regulations, such as opposing categorical exclusions, would serve as an opening for agencies to negotiate an

internal alignment of their requirements, including measures outside of the formal notice and comment process.

Listening session participants encouraged HUD officials to attend the meetings of regional tribal consortiums, such as the Great Plains Tribal Chairman's Association or the Northwest Indian Housing Association, to periodically discuss issues and explore ways to leverage inter-agency coordination efforts beyond the environmental review process. Ms. Atkins expressed a keen interest in building stronger ties to regional tribal consortiums to advance issues related to environmental review for tribal housing and housing infrastructure projects.

Additional comments on the recommendations of the Final Report may be submitted directly to Hilary Atkin at Hilary.C.Atkin@hud.gov, or by mail at the following address:

Ms. Hilary Atkin
HUD – Office of Native American Programs
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If you have any questions about this memorandum, or would like assistance with preparing comments, please contact Ed Clay Goodman at egoodman@hobbsstrauss.com or at (503) 242-1745.