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MEMORANDUM

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To: HOUSING CLIENTS

From: HOBBS, STRAUS, DEAN & WALKER, LLP

Re: *NAIHC Legislative Committee Meeting*

This memo reports on the monthly NAIHC Legislative Committee meeting and the NAIHC Legislative Conference held on March 6-8, 2017.

1. Legislative Committee

The Legislative Committee held its monthly meeting in person at the NAIHC Legislative Conference. The Chairman of the Legislative Committee, Gary Cooper, reported on items from prior meetings, including the work on the legislative priority list and the effort to set up a housing funding task force.

Mr. Cooper also announced that NAIHC is bringing on a new Executive Director, Tony Walters, who will also be taking over the NAIHC Governmental Affairs portfolio. He is moving over from the Senate Committee on Indian Affairs (SCIA), and has extensive legislative experience. Pam Silas will be taking over the Deputy Director duties.

A. Status Report on Legislative Issues

Paul Moorehead, NAIHC's lobbyist, gave a status report on NAHASDA reauthorization. We are in first session of 115th Congress. Republicans hold majority in both the House and Senate, and the White House is held by a Republican President, Donald Trump. The Republicans have set out a 200 day legislative agenda, which includes actions on the repeal and replacement of the Affordable Care Act; expedited permitting for physical infrastructure (including Keystone and DAPL); jobs; tax reform; border protection and immigration reform. The President has also issued a number of Executive Orders. Nick Mulvaney has been confirmed to head OMB. He is a budget "hawk." There will be a budget "outline" issued next week, with a full Presidential budget proposal sometime in May. At his address to the joint session of Congress last week, President Trump gave some advance notice of his budget priorities: \$54 billion increase in defense; \$1 trillion for infrastructure; and no cuts in entitlement programs. The Administration will propose cuts in other discretionary programs in order to offset the increase in defense spending.

The Senate has confirmed 18 of the President's nominees, including Dr. Ben Carson as HUD Secretary. His nominee for the vacant Supreme Court seat, Neil Gorsuch, is still pending action in the Senate. Judge Gorsuch has experience ruling in Indian law cases.

Mr. Moorehead gave a brief recap of the new Congressional leadership. In the House, Paul Ryan is Speaker, Nancy Pelosi (D-CA) is Minority Leader. The Committee on Financial Services is chaired by Jeb Hensarling (R-TX). Majority Leader of the Senate is Mitch McConnell (R-KY). The Committee on Banking, Housing, and Urban Affairs is chaired by Mike Crapo (R-ID). There is a new Chair of the SCIA: John Hoeven (R-ND), and a new Vice-Chair, Tom Udall (R-CO).

A number of previously pending Indian bills have been reintroduced early in this session: Native American Energy Act; American Indian Empowerment Act; Indian Employment Training Act; Tribal Labor Sovereignty Act; Energy Bill (in Senate); *Carcieri* fix legislation (several bills in the House). But no NAHASDA reauthorization bill has been introduced.

Mr. Moorehead then gave an update on NAHASDA reauthorization. He gave a brief history of NAHASDA's passage as a bi-partisan bill in 1996, and the addition of the Native Hawaiian NAHASDA provisions in 2000 (Title VIII). The last time NAHASDA was reauthorized was in 2008, and it expired in 2013. It needs to be reauthorized. There has been a vigorous effort by NAIHC and its allies in Congress to get NAHASDA reauthorization. The House passed a strong NAHASDA reauthorization bill in 2014, but it failed to pass out of the Senate and died at the end of the 113th Session. Senator Mike Lee (R-UT) expressed opposition with withheld consent, based on the Native Hawaiian provisions. The same bill was reintroduced in the House and passed again in 2015. But, again, it failed to pass out of the Senate prior to the end of the 114th Session, for the same reason. Behind the scenes, the House and Senate committees of jurisdiction attempted to negotiate a compromise bill that could be passed and signed by the President, but that effort also failed, despite good faith effort by all participating. So this has put NAIHC and its allies in the position of having to start over again.

But the political landscape has changed. NAHASDA funding may be in jeopardy if NAHASDA is not reauthorized, due to the emergence of budget hawks in key positions, including at OMB.

NAHASDA reauthorization will be introduced again in the 115th Session. The likely sponsor in the House will again be Steve Pearce (R-NM), who introduced the last two NAHASDA reauthorization bills in the last two sessions of Congress. But the bill will be heard by the House Financial Services, Housing subcommittee, headed by Sean Duffy (R-WI), who has a number of tribes in his district but who is not that familiar with Indian housing yet (NAIHC has been meeting with him and his staff to provide information and education).

NAIHC's strategy, developed in the weeks since the legal symposium in December and on the call in early January, is two-pronged. The first is to seek a one-line provision in some must-pass, fast-tracked bill that would simply reauthorize the Indian Housing Block Grant (IHBG) for a period of years. That would allow tribes to continue operating under the existing NAHASDA statute, and head off the questions that certain House appropriators might ask about why an unauthorized program should be funded at all. The second prong would be to continue to push forward a more detailed NAHASDA reauthorization bill, using the "consensus bill" that had been negotiated between the House and Senate staffers late in the last session. In late January, the NAIHC Chair sent a letter to Congressional leaders outlining this strategy and including a NAHASDA reauthorization bill that is very similar, but not identical, to the bill passed by the House during the last two sessions. However, we expect the process to move a bit more slowly this time, in part because there is a new Chair (Congressman Duffy) of the relevant subcommittee, who will need to get up to speed and deal with other priorities.

One of those priorities is to repeal a HUD Fair Housing regulation, adopted in the final year of the Obama Administration, that required housing funding recipients to take active efforts to remedy the effects of past discrimination. There is a lot of Republican interest in repealing this regulation, but Democratic support for it ensures there will be a lot of "fireworks" over this issue. While this does not directly impact Indian housing, it does mean that this bill may take up a lot of the bandwidth available for addressing housing issues in Congress.

Mr. Moorehead was asked for his opinion as to what would be the prospects for this session, if the NAHASDA reauthorization bill continues to include the Native Hawaiian provisions. He indicated that Senator Lee will likely continue to oppose the Title VIII provisions, but there may be an opportunity to work with him to resolve the Native Hawaiian issues. There was some effort to do that last session, with an attempt to put some limitations on the Native Hawaiian provisions that address his concerns. Another option that has been discussed before was bringing the NAHASDA bill to the Senate floor and allowing Senator Lee to move to amend (to strike the Native Hawaiian provisions), to allow for a debate on the issue so that Senator Lee can introduce his concerns into the record, and then move for passage. While this would likely satisfy Senator Lee, floor time at the Senate is at a premium, and this approach would require concurrence of the Senate leadership (both Democratic and Republican). Since there are many other Indian legislative priorities it will be difficult to get floor time. So NAHASDA remains a bill that will likely require unanimous consent to move out of the Senate.

There was also some discussion of the proposal for infrastructure funding, and the possibility for tribes to get some of that funding. The SCIA is holding a roundtable next week on infrastructure issues to try and coordinate interest in and connection to Indian Country. The issue to present on is not so much the need, as Congress understands the need, but rather best practices and shovel-ready projects.

At the last Legislative Committee meeting, Mr. Moorehead pointed out that it was too early in the session to know much more, and that still holds true today. While the “one-line” IHBG reauthorization approach has appeal, we still have not had substantive or strategic discussions with the key players, because Congress is busy with other priorities at the moment. No particular bill has been identified as a vehicle, and we do not know if there will be support for this approach. He also noted that the “consensus bill” that had previously been agreed upon contained language for the Native Hawaiian NAHASDA provisions, but since that time the Chair of the House Appropriations Committee, Jeb Hensarling, has signaled that he is now opposed to such a provision. Mr. Moorehead did meet with staff at the House Financial Services Committee mainly to lay out NAIHC’s plan, but he has not yet received any feedback. Representative Duffy, the Chair of the Housing Subcommittee, will be taking the lead on the NAHASDA reauthorization bill at the committee level. Mr. Moorehead is planning to meet with him and his staff next week.

In response to a question about what steps can NAIHC members take, Mr. Moorehead suggested writing letters to their members of Congress to tell them that NAHASDA reauthorization is a priority (and explain why it is important in terms of housing and jobs), that it has already been vetted repeatedly and passed twice by the House, and that we need to get this done now so we can move on.

Mr. Moorehead also discussed questions regarding whether this Congress was potentially moving forward with some anti-Indian proposals from the Goldwater Institute, ideas that are presented as for the benefit of tribes (such as removal of federal oversight and jurisdiction) but that will actually undermine sovereignty. Mr. Moorehead said he was not aware of such efforts, but also pointed out that tribes themselves have moved for such efforts in the recent past (he pointed to the HEARTH Act as an example). One of the participants pointed to a bill, S. 103, that would undo many of the requirements of the Fair Housing Act (it would, for example, allow exclusionary zoning), but that also had a provision that would prohibit HUD and other federal agencies from using data to show the disparate impacts of housing policies. The concern is that such language might also prohibit analysis of impacts and needs specific to Indian Country.

B. FEMA Flood Mapping

Denise Zuni provided some background information. The federal Flood Disaster Protection Act of 1973 prohibits the use of federal funds for construction and rehabilitation on floodplains unless a community participates in the National Flood Insurance Program (NFIP) and purchases flood insurance. This prohibition is imposed on IHBG funds by 24 CFR 1000.38 (the NAHASDA regulations). The prohibition also applies to Indian Community Development Block Grant (ICDBG) funds.

A tribe whose lands have been flood mapped by FEMA and have been designated as being in flood plains cannot use IHBG or ICDBG funds, or for that matter, any federal funds for housing construction or rehabilitation, unless the tribe participates in the NFIP, mitigates the flood risks, and purchases flood insurance. The vast majority of tribes do

not participate in the NFIP. According to a January 2013 GAO Report, only 37 tribes participate in the NFIP.

At Isleta Pueblo (in New Mexico), sometime between 2008-10, when FEMA was flood mapping the two counties where Isleta is located, and FEMA did mapping of the Isleta Pueblo without government-to-government consultation, although there was some communication (i.e., a Dear Tribal leader letter was sent). Isleta Pueblo has many homes that were identified as located in the areas mapped as flood plains. In 2012, HUD began telling Isleta that it could not use federal funds to build in these areas unless the Tribe joined NFIP. When the Tribe met with FEMA, the agency stated that if the Tribe had told them ahead of time, they would not have published the flood plain maps (and would not have put the Tribe into the NFIP requirement). But the agency said it could not remove the Tribal maps once they are published.

Ms. Zuni made a presentation at the NAIHC annual meeting to try and find out how many other tribes may have been impacted by the FEMA flood mapping. It did not seem like many tribes were impacted (37), but she is still doing outreach to find out if this is a problem.

States, however, have apparently received exemptions that allow them to spend public housing and Community Development Block Grant (CDBG) funds in those areas. 24 CFR 58.6(a)(3) (the HUD environmental regulations), and 24 CFR Part 55(b)(1) (the HUD floodplain management regulations), appear to exempt States from the prohibition, specifically in their use of HOME funds and CDBG funds. If this is accurate, a Public Housing Authority can use HOME and CDBG funds, and perhaps HUD public housing funds, on floodplains even if a community isn't a member of the NFIP.

Ms. Zuni wants to see if NAIHC can advocate for a legislative fix that will exempt tribes. There apparently is a bill that is moving, but Ms. Zuni does not know the status of that legislation.

Ms. Zuni raised the following points regarding this issue:

- FEMA shouldn't flood map tribal lands without written tribal authorization.
- Flood mapping of tribal lands by FEMA without clear and express tribal authorization should be removed from FEMA's website.
- It is a costly and administrative burdensome process to amend flood maps. In some instances, amendments aren't possible unless a tribe joins the NFIP.
- The unauthorized flood mapping of tribal lands and requiring participation in the NFIP as a condition of federal housing funds interferes with tribal sovereignty and the right of tribes to self-governance. Many tribes have the capacity to assess and manage their flood risks without federal oversight. If a tribe wants federal assistance in managing its flood risks, it can at that point join the NFIP as a condition of receiving federal assistance.
- Why do states get an exemption, but not tribes?

Ms. Zuni proposed that this be a priority issue for NAIHC legislative advocacy. She suggested that NAIHC make an effort to obtain a similar exemption for use of IHBG and ICDBG funding as the States already have.

C. UNAHA Region efforts to obtain funding from USDA Rural Housing Programs

Jason Adams gave a presentation on USDA funding. He and his colleagues have been asking Congress to increase IHBG funding for years, but those efforts have not been fruitful. So they have also begun looking at other funding sources. They found that USDA has rural housing funding, but that it is under-utilized in Indian Country even though tribes are largely based in the rural areas that are intended to be funded by these programs. Mr. Adams has tried to obtain this kind of funding, but has not been successful (except for one project). Yet USDA comes out each year to talk about how much funding they have for rural development. Senator Tester told Mr. Adams that the place to make changes to the USDA rural housing funding program is through the Farm Bill, which will be up for reauthorization in a year or two. So there is an opportunity to make some changes to the USDA rural housing funding program via the Farm Bill. He is suggesting that this become a NAIHC priority. A couple of obstacles that he encountered: reluctance to use tribal courts or tribal jurisdiction; and the use of the Census for mapping populations and determining need which does not track or overlap with Indian Country.

Mr. Adams has continued his efforts to obtain USDA rural housing funding. But the regulations are not that clear, and they have not been developed through negotiated rulemaking. The regulations are very burdensome and difficult to use, and create a disincentive to utilizing this program.

J.C. Crawford from the South Dakota Housing Coalition also spoke about the efforts they are making to get USDA home loan funding to Indian Country. They would like to coordinate their efforts with other tribes, and to work with USDA to make the program easier to use. The key contacts that tribes need to work with are political appointees at the State level. They may not have experience dealing with Indian tribes, so there needs to be either some change in the statute or regulations, or more education and consultation.

Gary Cooper suggested an NAIHC workgroup on this issue to share best practices and best approaches, so that people can work together to maximize use of this program, as well as to develop legislative proposals.

D. Funding Task Force

Gary Cooper followed up with another call for participation on the proposed NAIHC Funding Task Force. The proposed task force would deal specifically with funding issues. Funding is an ongoing, critical issue for most tribal housing programs, and the amount of funds provided through the IHBG appropriations is simply insufficient. For much of the past year, certain members of the Legislative Committee

have been pushing for the establishment of a Funding Task Force that would specifically address these issues. Chairman Cooper asked the Committee members for input on (1) whether this was a good idea (the general response seemed to be yes it was); (2) who should be on the Task Force; (3) how should meetings be conducted; and (3) when and how often should it meet?

The discussion focused on whether the Task Force should be structured like the Legislative Committee, with anyone who wants to participate being allowed to participate, with a monthly phone call set up, or whether there should be a specific group of persons, say one representative from each region, that would be the Task Force, with anyone who wanted to listen in and have input be permitted to do so (like the negotiated rulemaking committee).

Mr. Cooper did not get much feedback from the membership since the last meeting. He would like to have at least one person participate from each region.

E. NAIHC Legislative Priorities

Chairman Cooper noted that NAIHC is still trying to develop its list of legislative priorities for the upcoming session. While the two top issues – NAHASDA reauthorization and increased funding – appear to have a general consensus, there is no agreement yet on the next few priorities that NAIHC should be pursuing. NAIHC has received feedback from some, but not all of the regions. The list of proposed priorities were:

- NAHASDA reauthorization;
- Increase IHBG annual appropriations;
- Improved federal consultation processes and practices;
- Deliver Training and TA funds in accordance with NAHASDA, and to retain Training and TA in HUD ONAP, not PD&R;
- Advocacy for a single agency source of funding for infrastructure and site development;
- Increase backing for “supportive services” for housing to enable wrap around housing services, including but not limited to relaxing restrictions on affordable housing;
- Extend time for rebuilding demolished buildings;
- Extend/expand the BIA HIP, ensure transparent application and evaluation process;
- Funding for homeless evaluation programs;
- Direct TDHE grant eligibility for other HUD programs, such as HOME;
- Include case management in HUD/VASH programs;
- Allocate \$100 million a year (in non-IHBG funds) to combat methamphetamine issues in Indian Country; and
- Seek a floodplain exemption from NFIP requirements for Indian Country, similar to the exemption that states and Public Housing have.

The Committee then discussed this list to try and establish the working priorities for NAIHC. There was some discussion over the details of specific items on the list.

Mr. Cooper suggested moving the funding issues to be considered by the Funding Task Force, so they can consider various approaches to those funding questions: What sources might be available? What other options for increasing such funding might be available? No one objected to this approach.

Mr. Cooper also suggests training and TA issues and the 30% rule be included in the NAHASDA reauthorization provision, since these are items that NAIHC asks for each year.

The group ultimately decided to try and break up the list into categories and assign it to specific work groups, then send that around for comment and finalizing.

2. NAIHC Legislative Conference

A. Morning Session at Dirksen Senate Building: Members of Congress

The morning session on Tuesday, March 7, was held in the SCIA hearing room in the Dirksen Senate building. The session involved presentations by various members of Congress. Chairwoman Sami Jo Difuntorum introduced the speakers, after a moment of silence for the recent loss of Paul Iron Cloud and Jack Sawyer, both of whom played significant and prominent roles in Indian housing.

Representative Steve Pearce (R-NM). Congressman Pearce has been the primary advocate for NAHASDA reauthorization over the past two sessions of Congress, each time introducing the NAHASDA bills that were ultimately passed out of the House. He promised that Congress is going to get this reauthorization bill passed. He followed up Chairwoman Difuntorum's remarks about keeping our divisions at home. There are many in Congress who are looking for an excuse to say "no." If your divisions are public, it gives the naysayers the opportunity to do nothing. The power of unity is critical. He said "we will be ok in the House," but the Senate is going to be a challenge once again. He said, in the meantime, you should be looking at other ways to move housing forward. He spoke about efforts by tribes in his states to get private financing onto tribal lands for housing development. Tribes need to look at ways to provide for private homeownership and investment in Indian Country. He is optimistic going forward. He says that he has talked with President Trump's transition team about the need to invest some of the infrastructure funding he is working on in Indian Country, and his team was very supportive about such investment. He thinks that the kind of infrastructure that will "absolutely" be provided is the infrastructure to support manufacturing, so to the extent that tribes are working on manufacturing they will get infrastructure development. But even for tribes who will not be developing manufacturing, he is going to work on getting rid of the restriction for housing programs to use IHS infrastructure funding to support NAHASDA funding. In response to a question, he said that Congressman Duffy will be a

strong supporter of NAHASDA reauthorization. Congressman Duffy has asked for a few changes that “will make the bill better,” and they will work with him to get the bill passed in the House.

Senator Catherine Cortez-Masto (D-NV). She was recently elected to fill the seat vacated by Senator Harry Reid when he retired. She sits on the Committee on Banking, Housing, and Urban Affairs, and on the SCIA. She was the former Attorney General of Nevada, and she worked with tribal communities in Nevada in that capacity. She requested to serve on the SCIA because of that experience. She came to introduce herself and say she is looking forward to being a partner to Indian Country. One person from Washoe asked her to support and enhance the use of New Market Tax Credits in Indian Country. Senator Cortez-Masto said she has heard that message and will look into this. Another participant asked her to follow-up on Senator Reid’s tradition of touring Indian Country in Nevada. She promised to do that, and said that she had done so as Attorney General. She was asked about how she sees NAHASDA progressing through the Senate this time. She says that as a freshman Senator, she does not have a lot of history on this issue, but knows that her colleagues on the SCIA are working hard on reauthorization, and she will have a dual role on the Committee on Banking, Housing, and Urban Affairs as well. She and her colleagues are committed to working on reauthorization.

Senator Lisa Murkowski (R-AK). Senator Murkowski has been in the Senate since 2002, and has been an advocate for Indian Country. She is currently on the Senate Appropriations Committee, as well as a senior member of the SCIA. She began by talking about the importance of housing. If you don’t have shelter, you cannot focus on the other issues like education and health. There is a new administration and a lot of new faces in Congress, and you should assume these folks do not know much about Indian Country – and you will need to educate them about Indian Country. She says that the new HUD Secretary Dr. Ben Carson, who has a background in health care, should have an interest and support for housing. But you should invite him out to Indian Country and educate him about your needs and issues. She also pointed out the new Chair and Vice-Chair of the SCIA are familiar with Indian Country, but tribes will need to educate them about the importance of housing. There will be a lot of competition for the available funding. She spoke of the need to increase NAHASDA block grant funding. She also noted that the new Administration is going to be taking a “keen look” at budgetary issues, and will be looking at cutting discretionary spending. You will need to make the case that housing is a priority.

Senator Heidi Heitkamp (D-ND). Senator Heitkamp spoke about how the housing conditions in Indian Country are “deplorable.” She stated that we are failing and falling behind in meeting the need in Indian Country for adequate housing. It is going to take more than consultation to get results; it will take commitment and follow-through. Unless we hold people accountable, we will fall further and further behind. She thinks that the new Administration is going to be focusing on budget cuts, and Indian Country has to respond by demonstrating that it need increases just to try and bring Indian Country back up to par with the rest of the country. She spoke generally about how much Indian Country funding is spread out across the “discretionary” budget and may be

targeted for cuts. She noted that all these different areas are related to housing: education, health care, environment, and transportation. She says that tribes must be loud, you have to fight, and you have to tell your story. She asks for all to be as active as you can be. She argued that the approach to these issues in Indian Country has been a “patchwork,” and we need a whole new approach. She says there are a lot of people in the Senate, on both sides of the aisle, who are ready to “fight the fight.”

Congresswoman Gwen Moore (D-WI). Representative Moore also played a key role in NAHASDA reauthorization in the House over the past two sessions. She gave a lot of praise to Chairwoman Difuntorum for her efforts in NAHASDA reauthorization. She says she thinks the bill will make it over the finish line because it is a truly bi-partisan effort. She called for a unified voice from Indian Country to pass NAHASDA reauthorization. Tribes need to keep up the effort and the pressure on their delegations. She pointed out other bi-partisan efforts to protect and enhance tribal sovereignty. She thanked the group for avoiding partisanship. She also acknowledged that reauthorizing NAHASDA is not going to resolve the crisis in Indian housing. She also pointed to a letter from the Alaska Association of Housing Authorities laying out a strategy for reauthorization, and she encouraged the group to support that approach (which is the two-stage approach that NAIHC has adopted, described above). She also voiced support for keeping the Native Hawaiian provisions of the NAHASDA bill (as well as the provisions protecting the Cherokee Freedman). She also said that she thinks that the amendments in the House bills passed in the past two sessions are important to help tribes use their IHBG funds more effectively.

Congressman Tom Cole (R-OK). Representative Cole (Chickasaw Nation) is one of only two Native Americans serving in Congress, and he has been a leader on issues important to Indian Country. He praised Representative Moore for her efforts on behalf of tribes, and he pointed out the need for bi-partisan efforts to get NAHASDA reauthorized. He voiced support for the Native Hawaiian provisions of the previous House bills, noting that Congress has passed over 160 bills for the benefit of Native Hawaiians, and he does not know why we cannot get this same recognition in NAHASDA. We are heading into some very important debates going forward, including health care. He says that any repeal and replacement of the Affordable Care Act must protect the Indian Health Care Improvement Act (which was incorporated the Affordable Care Act). He mentioned the infrastructure bill briefly. He says we do not know what is going to be in the bill, but we know that Indian Country needs infrastructure improvement, particularly in the large reservations. There needs to be some set-aside for Indian Country in the bill, and he will advocate for that. Finally, he pointed out that defense spending is going to increase by \$54 billion under the Trump Administration, and that that funding is going to result in a decrease in discretionary spending. Funding for all tribal programs comes from the discretionary side of the budget, so there will be a fight to protect Indian funding. But he noted that because Indian Country works in a bi-partisan basis, there is a good opportunity to protect such funding. Tribes need to continue to build friends on both sides of the aisle.

Senator John Hoeven (R-ND). Senator Hoeven is the Chair of the SCIA, and he also serves on the Appropriations Committee. He says that it is imperative for NAHASDA to be reauthorized. He spoke about a number of other sources of funds that can be leveraged to develop Indian housing, and that tribes will need to be creative about leveraging such funds (USDA, New Market Tax Credits, and Low Income Housing Tax Credits). He will soon be introducing the BUILD Act, which he characterizes as a “Chevrolet not a Cadillac.” It does not contain all the provisions of the prior NAHASDA reauthorization, but it will reauthorize IHBG funding and will include some of the streamlining provisions of the prior NAHASDA bills. It will also reauthorize the Section 184 loan guaranty program. He is in the early stages in receiving comments on the bill. He looks forward to receive other comments, but is looking forward to getting the bill introduced and passed. He was also encouraged that HUD finally released its study on the needs facing housing in Indian Country, and he is going to call HUD before his Committee to ask how the agency plans to address that need. He also stated that one of his priorities will be supporting Native veterans. Senator Hoeven also mentioned the infrastructure bill, and said that Indian Country must be a part of any infrastructure package. Finally, he noted that the SCIA has already advanced nine bills to the Senate floor, through a bi-partisan effort. He is hopeful that these bills will be passed and signed by the President.

B. Afternoon Session: Federal and Industry Partners

Chairwoman Difuntorum kicked off the afternoon session by underscoring the need for a unified approach to lobbying for NAHASDA, but also the need for tribes to tell their Congressional delegation the specific stories regarding their housing programs, their needs, and their specific issues and projects. There is a big gap in the amount of funding needed and the amount appropriated. The HUD budget is substantial, but the Indian housing portion is very small, and we need to increase it. The ask is simple: reauthorize NAHASDA, provide more flexibility, and increase funding. But your stories are important.

She also introduced Tony Walters, the incoming Executive Director. Mr. Walters gave some brief remarks. He has been working on Indian affairs in Washington, DC, both on the Hill and in the Department of Interior, for seven years. He has a law degree from the University of Oklahoma, and will be a strong advocacy presence to NAIHC in DC.

Mike Andrews, Chief of Staff, Senate Committee on Indian Affairs. He followed up on Senate Hoeven’s comments about introducing the Building Useful Initiatives for Land Development (BUILD) Act as the first step toward NAHASDA reauthorization. It has been four years since NAHASDA expired, and we need to get it reauthorized. We hopefully have learned more about how to get this bill passed, but in the process over the past few years we have educated many members of Congress on the need facing Indian Country housing. At this point, the strategy should be to get the IHBG reauthorized. This is what the BUILD Act does, along with a couple of items to streamline and provide flexibility. It is the vehicle to get the block grant reauthorized (for 2018-2025). He also referred to it as a “Chevy” compared to the “Cadillac” version of

reauthorization (the NAIHC bill, and the bills previously considered). Mr. Andrews said that Senator Hoeven's idea was to call it something different than NAHASDA reauthorization, and to move this forward as a first step. But getting the block grant reauthorized is a priority, because without authorization the IHBG is at risk. BUILD Act will remove the multiple environmental reviews involved when there is funding from more than one agency, provide more flexibility for building homes on Indian land by increasing the maximum length of leases to 99 years, authorize training and technical assistance, and reauthorize the Section 184 loan guaranty. Mr. Andrews mentioned the possibility of having a hearing on Indian housing, perhaps in late April.

Mr. Andrews also gave some thoughts on what he called NAHASDA 2.0, how to develop NAHASDA to be more effective in building homes and in encouraging homeownership on trust land. One question he posed is how to make homeownership more feasible on trust lands. He also talked about the need to increase NAHASDA funding. The appropriations have essentially been flat since NAHASDA was passed. But he does not see a likelihood for an increase in the immediate future. So one thing to focus on is "what can we do with what we have?"

Mr. Andrews was asked about the Native Hawaiian provisions. He responded by saying we need to move forward on a dual track approach: get the block grant funding reauthorized, and then develop a second bill with the other items that Indian Country wants, such as Native Hawaiian funding, removal of the 30% rule, and other items, and see if it can be attached to some other legislative vehicle moving forward (such as, possibly, the infrastructure bill that the Administration wants). Another participant asked about making NAHASDA more "holistic," allowing tribes to address not just housing, but economic development, education, health care, etc., together. Mr. Andrews liked this idea, and suggested that Secretary Carson might be a good point person to champion this approach.

Denise Desiderio, Policy Director, NCAI. Ms. Desiderio focused her remarks on how to get NAHASDA reauthorized. We have champions in the House and Senate and should work with them. We are not starting from scratch. She also mentioned that NCAI supports the Native Hawaiian provisions in Title VIII, and that we cannot waiver on that. But that does not mean we cannot strategize ways to get NAHASDA reauthorization done. The discussions on the Hill right now are primarily focused on the infrastructure development proposals, but we can work housing into these conversations. We can bring up regulatory issues related to development, and the issues involved in water, sewer, and housing. One of the housing issues that keeps coming up in NCAI's discussions is how to get housing for teachers, firefighters, and law enforcement in tribal communities. We will need to work with Secretary Carson. In his address to HUD employees, he mentioned that there will not be any picking of favorites or treating anyone special or "extra." But since he is a "Constitutionalist," tribal advocates need to remind him that tribes are mentioned in the Constitution and that there is a federal trust responsibility toward tribes. She also suggested showing how the self-determination aspects of NAHASDA support small government, and encourage public/private partnerships.

Carrie Hritz, PhD, Supervisory Geographer and Branch Chief, Census Bureau. Dr. Hritz spoke about the role of the Census in providing the data that underlies funding decisions. She stated that “geography affects data.” It is important to get correct boundaries for reservations to determine population count and location. The Census is a source of information for other federal agencies, and, for Indian Country, they depend on expert review from tribal communities. The U.S. Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information about selected legally defined geographic areas, including reservations and trust areas. The BAS is used to update information about the legal boundaries and names of all governments, including tribal governments. The Census generates maps and shape files from database that are posted online for tribes to review. Use the TIGERweb online map viewer to quickly locate your “American Indian Area” and determine if you need to make boundary changes and/or feature updates. Once updated, the database is copied and sent to other offices. The process works as follows: every December/January, there is a BAS letter emailed and mailed out to the various jurisdictions, including tribes. There are deadlines to respond. March 1 is the BAS submission date deadline for boundary updates to be reflected in the American Community Survey (ACS) published data. Boundary submissions by this date are also reflected in next year’s BAS materials. May 31 is the deadline for boundary updates to be reflected in next year’s BAS materials. Submissions after this date are not guaranteed to be reflected in next year’s BAS materials. ***May 2019 will be critical, since that is the last update before the 2020 Census is underway.*** Tribes must provide documentation to update new lands taken into trust, but the Census can work with BIA regarding trust acquisitions. The Census has been working with NAIHC and can provide training to tribes. They are also working with BIA on data exchange to streamline the process and to assist tribes that do not have a lot of staff.

Thomas C. Wright, Director of HUD DC Office of Loan Guarantee. Mr. Wright spoke about the NAHASDA Title VI and the Section 184 loan guarantee programs, both of which his office oversees. He is working with BIA and the lending communities try to encourage homeownership in Indian Country, given the barriers posed by trust land ownership. He noted that Fannie Mae and Freddie Mac are both looking at getting involved in the Section 184 program, which is a Qualified Investment under the Community Reinvestment Act.

Stephanie Birdwell, Director of Office of Tribal Government Relations, Department of Veterans’ Affairs. Ms. Birdwell and staff who accompanied her spoke about the Native American Veteran Direct Loan Program and the HUD-VASH programs. The Direct Loan Program is structured to provide homeownership opportunities to Native veterans. The program also includes provisions for special adaptive housing grants for making homes more accessible for veterans with services connected disabilities. The grant can also be used as a construction fund. The HUD-VASH program is a voucher program to provide subsidies for rental housing for Native American veterans. She mentioned that there is a tribal affairs newsletter on the VA website: www.va.gov/tribalgovernment

Heidi Frechette, Deputy Assistant Secretary, HUD Office of Native American Programs. Ms. Frechette began her remarks by noting that her position is not a political appointee, and therefore she will remain in her office into the next Administration. She noted that there appears to be great demand for ICDBG and for the HUD-VASH program, and that she and her staff are working to make sure these programs work in Indian Country. They are working closely with HUD to make sure the HUD-VASH pilot project is a success and is continued. She also noted that HUD has recently issued its new needs study of housing in Indian Country. The last study was issued in 1998. HUD sees the needs study as an evolving process. She also wants to get the message out that NAHASDA is working. She also understands that Native families would prefer to own their own homes, and will work on homeownership initiatives in Indian Country. Finally, now that Secretary Carson has been confirmed, the Intertribal Advisory Committee will now move forward. HUD chose the membership of the Committee from 39 nominees.

Announcements

The next NAIHC event is the Annual Convention, to be held at Nashville, TN, on June 27-29.

The Legislative Committee will hold its monthly call the first Thursday of each month, at 1:00 PM Eastern.

If you have any questions about the items in this memorandum, please do not hesitate to contact Edmund Clay Goodman at EGoodman@hobbsstrauss.com or by phone at (503) 242-1745.