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MEMORANDUM

June 2, 2025

TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman & Cari L. Baermann
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RE: ***NAIHC Annual Convention, NAIHC May 26, 2025 Legislative Committee Meeting and Other Housing Updates***

We attended the National American Indian Housing Council (NAIHC) Legislative Committee meeting and Annual Convention, held in Los Angeles, California the week of May 26–30, 2025. This memorandum provides a synthesis of information presented during the Legislative Committee meeting, the plenary sessions, some of the key presentations, and other developments in housing matters.

I. NAIHC Legislative Committee

a. *Congress and Housing Advocacy Efforts*

Rudy Soto, NAIHC Executive Director, Blythe McWhirter, NAIHC Federal Affairs Associate, and Chris Kolerok, of Cook Inlet Housing Authority, one of the Legislative Committee co-chairs, facilitated the Legislative Committee meeting.

Mr. Kolerok began the meeting by noting that the razor thin majority in the House means that there is an important opportunity to have tribal voices heard. Tribes can give the House an “opportunity to win” by passing legislation to benefit Indian Country. Mr. Kolerok urged all participants to reach out to the Administration and to Congress to ask for increased funding and for reauthorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA). He pointed out that there are 435 members of the House, and they all need help to get the word out about NAHASDA reauthorization. Mr. Kolerok recommended that tribal housing advocates meet not just with the House Representatives, but also with others in positions of authority over appropriations and other key legislation. He noted that NAIHC’s Blythe McWhirter is available to help set up meetings and get out the message. Our firm is also available on the ground in Washington, D.C., to assist with coordinating meetings and drafting talking points as well.

Rudy Soto then gave his opening remarks. He noted that we are in unique moment in history. Housing is in the top three issues among Americans being polled. This presents a strong

opportunity for advocacy on Indian housing issues. We also have a strong champion in Representative Tom Cole (R-OK), a Chickasaw Nation tribal member who is the Chair of the House Appropriations Committee. Therefore, despite the cuts proposed by the President's budget, it is the House that makes the final decisions on appropriations, and with Representative Cole and other allies, we can protect funding for Tribal housing. However, Mr. Soto has been told that we need to get our message out more clearly and forcefully concerning the need for increased funding.

Mr. Soto and NAIHC Board Chair Bobby Yandell began meeting with the Trump Administration from the beginning of the Administration. Through those meetings, Mr. Soto noted that NAIHC was able to obtain the exemption from the President's anti-DEI executive orders for Tribal housing programs. HUD was the third federal agency to make this exemption formal. NAIHC staff are continuing to meet with appropriators. However, to bolster NAIHC's advocacy efforts, NAIHC needs resolutions and letters of support from its member Tribes and tribally designated housing entities (TDHEs). There needs to be an "echo chamber" going around so that members of Congress are hearing the same message from tribal housing, and repeatedly. NAIHC members should invite Senators and Representatives and their staff out to tribal communities. It is very helpful to have members or staff to see tribal communities on the ground. Even if they do not accept the invitation the first time, keep at it. These are key opportunities for a lasting impact.

Ms. McWhirter also gave her opening remarks. She has been meeting with members as well as with other advocacy partners. She thinks we have a unique opportunity to protect and perhaps increase funding for Indian housing. As with Mr. Soto and Mr. Kolerok, she emphasized that this is going to be a communal effort, and that NAIHC needs its members to send letters, and to show up in Washington D.C. or district offices to make their voices heard. NAIHC can assist with the messaging, which should be a combination of demonstrating successes as well as underscoring the need for increased funding for housing. It is also important to show that additional housing not only houses people, it is also a foundation for economic development and helps break the cycle of poverty in communities.

An attorney from NAIHC's lobbyist firm gave her remarks as well. She went over the slides showing the general overview of the current situation. For fiscal year (FY) 2025, funding level with FY 2024 was maintained through the continuing resolution that was passed in March 2025. The President's "skinny budget" was released in April, which proposed cuts in \$479 million in HUD's tribal programs. NAIHC will be advocating that the FY 2025 levels are the baseline we must work from, and that we must work upwards, and not see any cuts to funding for tribal housing. NAIHC will work with partners and its membership to get this message out in the "echo chamber" that Mr. Soto mentioned.

In addition to protecting and increasing funding, NAIHC is also pushing the following legislative priorities: expanding the eligible basis for Low Income Housing Tax Credit (LIHTC), which will help tribes; and modernizing the federal housing bureaucracy (streamlined mortgage approvals, environmental review).

Mr. Soto and Ms. McWhirter commented that data is crucial to backing up the messaging around the need for increased funding for housing. They also stated that storytelling drives home

the impact and reality of that data. Mr. Soto and Ms. McWhirter therefore urged tribal leaders to develop their success stories and best practices with funding increases. They recommended that tribes' advocacy materials and messages should demonstrate the need to build on previous successes in housing. NAIHC will have sample outreach resources, including tribal resolutions, letters of support, and invitations to in-district meetings and site visits. Jackie Pata, NAIHC Board Member from Alaska, asked that NAIHC develop a standard template for putting such data together so that the messages are easy to read and digest. Ms. McWhirter said that NAIHC is willing and able to do this, and will aim to develop forms that you can use to plug in the data for your Tribe or TDHE.

Ms. McWhirter laid out the NAIHC Summer–Fall 2025 engagement plans. From June to July NAIHC staff will be sitting in on staff briefings, and will seek the introduction of a NAHASDA reauthorization bill and the advocacy tool rollout. In August, NAIHC will follow up with in-district meetings, site visits, and tribal housing tours. In November, NAIHC will focus on the National Rural Housing Conference and Congressional fly-in. Ms. Pata said that meeting with Congress in September will be a good opportunity to get the message out to Congress again about the need for increased housing funding.

Ms. Pata then gave an update on the HUD Tribal Intergovernmental Advisory Committee (TIAC). She is the co-chair of the TIAC with Mr. Yandell. TIAC is comprised of 15 tribal leaders from across Indian Country. There are currently open seats on the TIAC and on May 19th, 2025, HUD published a notice in the Federal Register seeking nominations for tribal leaders to serve as members on the TIAC. Nominations close on July 18, 2025. Nominations can be submitted through [regulations.gov](https://www.regulations.gov). More information on submitting nominations is available [here](#). Members of the TIAC have to be either elected tribal leaders or delegated by tribal elected leaders to represent them. Ms. Pata commented that, as part of its ongoing advocacy efforts, TIAC has been meeting with the new Administration. Further, TIAC put together comprehensive comments in response to HUD's intent to revise its regulations at 24 CFR parts 50 and 58 to streamline the environmental review process. TIAC are also putting together comments on streamlining the reporting requirements for HUD grants, as well as on the data that should be developed to support protecting and increasing funding.

Mr. Soto then spoke about the joint task force between the U.S. Department of Interior (DOI) and HUD for use of underutilized federal lands for housing. NAIHC is pushing for tribes to be at the table. However, there is not much to report beyond the initial press release and social media posts. There was an amendment proposed for the reconciliation bill by the Utah delegation (which was defeated) that would have made it so that the federal government would re-designate public lands for “affordable housing,” and that mining companies, other resource extraction entities, and local communities would get priority over getting the lands. This amendment was concerning because it provided no definition of the key terms, and it provided no restrictions or oversight on these entities taking the federal public lands. We need to keep a close eye on the approach that is used by this joint task force, since this approach could be very problematic. NAIHC will push hard for a tribal role and tribal consultation in this process to ensure that tribes have a voice in how federal lands are used.

Ms. Pata then gave an overview of the NAIHC Resolution Policy. The Resolution Policy provides that NAIHC members must submit proposed resolutions to NAIHC at least three weeks prior to the NAIHC meeting. Any resolutions that come in after that must go to the NAIHC Board before being considered by the membership. Similarly, any resolutions that impact any expenditure of funds by NAIHC must also be considered first by the Board. The Board will also review all submitted resolutions to consolidate similar resolutions, and uncontroversial resolutions will be put on a “consent agenda,” although any member can ask for any resolution to be pulled out of the consent agenda for full discussion.

b. NAIHC Legislative Committee Meetings and Future Conferences

The NAIHC Legislative Committee meetings will continue to be held on the first Thursday of each month via Zoom. The next meeting of the NAIHC Legislative Committee will take place by Zoom on July 3, 2025 at 1:00 PM Eastern Time. Participants may submit questions prior to the meetings through the link provided in the NAIHC email that is sent out before each call.

II. Opening Plenary Session

a. Opening remarks

Rudy Soto, Bobby Yandell, Robert Smith, *NAIHC Board Member*, Phil Bush, *Chairman of AMERIND*, Anthony Pico, *City of Los Angeles Native American Affairs Liaison & Constituent Correspondence Coordinator*, and Andrea Garcia, *Los Angeles Mayoral Appointed Commissioner*, gave opening remarks. The presenters made brief comments on the challenges that tribal housing communities face. They also commented on the opportunities available to continue to advocate for increased funding for housing. Mr. Yandell remarked that Representative Cole is still demonstrating his support for tribes, which presents a strong opportunity for tribes to partner with Representative Cole in advocating for tribal housing.

b. NAIHC Membership Meeting

Rudy Soto, who is still relatively new in his position as NAIHC’s Executive Director, introduced himself to the membership. He then gave an update on the organization’s goals and status for this coming year. NAIHC’s focus for the remainder of the year will be protecting and enhancing appropriations and advocating for NAHASDA reauthorization. Just last week, NAIHC learned that they have a sponsor in the House for NAHASDA reauthorization. In the past Congress session, the only House bill that was introduced was the version from Representative Maxine Waters (D-CA), whose version of the bill contained several provisions that were problematic for NAIHC and its membership. It is therefore beneficial for NAIHC to find a sponsor in the House willing to introduce a bill distinct from Representative Waters’ bill.

NAIHC noted that President Trump’s second executive order dealt with the need to address the crisis in affordable housing. This presents an opportunity for NAIHC and its membership to press their concerns and to find allies within the Administration as well as Congress to further NAIHC’s legislative and regulatory goals.

1. Bylaws

The NAIHC membership then addressed proposed amendments to the NAIHC bylaws. One of the proposed amendments was to revise the Bylaws Article III Section 3 to include the following language: “Applications for Voting Class members that document meet the criteria in Section 2 (a) above are deemed accepted without board approval provided the board is provided with an update of such new members at a meeting of the board of directors.” The membership approved the motion to adopt this amendment.

A second proposed amendment was intended to revise Article IV Section 6 to reduce the number of members required to meet quorum at meetings. The proposed amendment, included in full [here](#), would only require 33% of the membership to be present to constitute a quorum. Ms. Pata remarked that the amendment is intended to make it easier for NAIHC to establish a quorum and carry out business. The Bylaws would still require a supermajority of that 33% to pass a resolution. *See* Bylaws Art. XIX. A Yakama Nation Housing Authority Board Member remarked that the amendment would give too much power to a few members to make decisions on behalf of the entire membership. In support of that concern, Sami Jo Difuntorum, Executive Director of the Siletz Tribal Housing Department, added that the Northwest Indian Housing Association’s (NWIHA) concern was that with the reduction of the quorum to 33%, the requirement that resolutions be passed by two-thirds of the membership would mean that only 22% of the membership (2/3 of the 33% of members present) could pass a resolution. To address this concern, NWIHA proposed a friendly amendment to the amendment to state that a “... provided further that notwithstanding anything herein to the contrary, no resolution will be valid unless approved by an affirmative vote of at least 33.3% of the entire membership entitled to vote.” After discussion, the membership revised the amendment further to state that “resolutions must be approved by a supermajority vote.” The members adopted the amendment with those two revisions by consensus.

A third proposed amendment to the Bylaws would revise Article IX, Section 1 to allow the Board Chair to appoint committee chairs and create other committees. A Yakama Nation Housing Authority Board Member commented that the revision would mean that the Chair could appoint committee chairs without any democratic involvement of the Board, which is concerning. The membership passed the proposed amendment by motion.

One of the final amendments revised Article XIV Section 1 to allow the Board to change membership dues without needing to amend the bylaws. The NAIHC membership approved this amendment.

2. Resolutions

The NAIHC then considered nine proposed resolutions, which are available [here](#). The nine resolutions are as follows:

1. Resolution A: A Resolution Supporting the Re-Authorization of the Native American Housing Assistance and Self-Determination Act

2. Resolution B: A Resolution Supporting Increased Funding for Indian and Alaska Native Housing
3. Resolution C: A Resolution Supporting the Whole-Home Repairs Act
4. Resolution D: A Resolution Supporting the Tribal Trust Land Homeownership Act
5. Resolution E: A Resolution Supporting the Rural Housing Service Reform Act
6. Resolution F: A Resolution Supporting Local and Regional Offices of the U.S. Department of Housing and Urban Development
7. Resolution G: A Resolution Supporting Veterans' Affairs Tribal Advisory Committee (TAC)
8. Resolution H: A Resolution Supporting Consultation on Opening Federal Lands for Housing Development
9. Resolution I: A Resolution Requesting an Exemption from the Build America, Buy America (Baba) Act

The membership adopted all of the resolutions without change, except for Resolution A and Resolution H. For Resolution A, one of the NAIHC members proposed amended the Resolution to state that NAHASDA should be reauthorized for a *minimum* of 10 years. The membership approved this amendment and adopted the resolution.

Resolution H advocates for consultation regarding opening federal lands for housing development. DOI and HUD have announced a collaboration to identify federal lands that can be opened up for affordable housing development. The fourth Whereas of the Resolution states that “Tribal governments must be consulted on the implementation of this program to assure that tribal lands are protected and that Tribes receive the same opportunities for housing development[.]” One of the NAIHC members proposed amending that Whereas to state “federally recognized Tribes receive the same opportunities” The membership approved this amendment and adopted the resolution.

Mr. Kolerok then gave the NAIHC Treasury Report. He reported that in 2022, NAIHC had an even budget. However, in 2023 and 2024, NAIHC ended up with a negative balance. Mr. Kolerok stated that this was due to costs related to high turnover of staff. NAIHC was able to use some of its reserve funding to cover that negative balance. For the 2025 budget, NAIHC was able to reverse that negative trend and end up with a positive balance. This was due to strong fundraising efforts and measures that NAIHC put in place for cost controls, to reduce some of the unnecessary costs. Mr. Kolerok stated that this excess in funding will allow NAIHC to rebuild its reserve funding.

III. Plenary Session Day 2

a. Opening Remarks

Derek Valdo, Sr. Chief Executive Officer of AMERIND, Rudy Soto and Chuck Hoskin Jr., Principal Chief of the Cherokee Nation, gave opening remarks. Mr. Valdo commented on the challenges that TDHEs face due to the high costs of housing insurance. Mr. Valdo recommended that tribes and TDHEs work together to create solutions to mitigate these high costs.

b. Panel 1: HFA Best Practices—Tribal Housing Leaders and States Working Together for Housing Solutions

NAIHC held a panel on Housing Finance Agencies (HFA) Best Practices: Tribal Housing Leaders and States Working Together for Housing Solutions. Sami Jo Difuntorum, NAIHC Vice-Chairperson and Executive Director of the Siletz Tribal Housing Department moderated the panel. The panelists included Timothy Mahern-Macias, Tribal Liaison, Oregon Housing and Community Services (OHCS), Sharlynn Rosales, Tribal Liaison, Housing New Mexico, and Corey Strong, Tribal Liaison, Minnesota Housing. The panelists highlighted successful partnerships between tribes and state HFS.

Mr. Strong discussed Minnesota's efforts to ensure that tribal voices are heard in the Minnesota government. These efforts include informing the government of tribal concerns and needs, and informing the tribes of proposed policy changes, funding opportunities, and other governmental initiatives that could impact tribes. He remarked that if tribes and TDHEs request that state government officials visit tribal areas, it can be a useful way for the state government to become more informed of the actual obstacles that tribes face.

Mr. Mahem-Macias commented on the strategies that OHCS used to develop partnerships with tribes. He mentioned that to increase tribal involvement, OHCS created workgroups to engage directly with tribes. The workgroups focused on designing the programs to specifically meet the needs that tribes identified instead of having a generic state program applied to tribal areas. Mr. Mahem-Macias stated that part of the success was due to OHCS focusing on ensuring that the Oregon government's decision-makers were in the room to talk with tribal leaders. Mr. Mahem-Macias further remarked that OHCS created the Legislative Commission on Indian Services (LCIS) as a mechanism through which tribal advocates can give feedback to Oregon on legislative changes. Ms. Difuntorum emphasized that tribal set-asides do not do enough to meet tribal needs. Tribes instead need to be able to have a voice in how the programs are structured. She said that it is critical that tribes have a seat at the table for state housing programs.

Ms. Rosales discussed some of the successes and challenges that Housing New Mexico faced in partnering with tribes. She remarked that the Housing New Mexico focused on including tribal leaders in key meetings about housing programs and funding. She also stated that it is important that state officials be trained on tribal history, tribal sovereignty, and current needs of tribes.

c. Panel 2: Tools for Nation Building—How the Federal Reserve Engages with Tribal Communities

The next panel covered Tools for Nation Building: How the Federal Reserve Engages with Tribal Communities. Sharon Vogel, NAIHC Board of Directors and Executive Director of the Cheyenne River Housing Authority moderated the panel. The panelists included representatives of the Federal Reserve: Jessica Monge Coria (San Francisco), Heather Sobrepena (Minneapolis), and Steven Shepelwich (Kansas City).

The panel began by explaining what the Federal Reserve does. First, the Federal Reserve sets financial policy for the United States by setting interest rates, with the goal of protecting jobs, financial stability, and controlling inflation. Second, they oversee banks and related institutions to ensure they operate within applicable laws and regulations, and treat customers fairly. Third, they have a goal of community engagement, in the areas of financial literacy, community development, and affordable housing. The Federal Reserve is overseen by a Board of Governors appointed by the President and confirmed by the Senate. There are twelve federal reserve banks throughout the country, and the presidents of those banks confer with the Board.

The Federal Reserve has a specific community engagement division (the Center for Indian Country Development, or CICD) for outreach to Indian Country. This supports the community development function mandated by Congress. In part, this is done through enforcement of the Community Reinvestment Act. The CICD focuses on four strategy areas: exploring access to credit and financing; expanding understanding of tribal public finance; understanding the contribution of Native enterprises to local and regional economies; and closing economic data gaps to empower Native peoples and communities to shape their economic futures. The last item is critical: developing accurate and complete data is necessary for supporting the remainder of the Federal Reserve's functions in Indian Country. CICD began by setting out principles for research and data use. The data belongs to the communities, not the Federal Reserve. Part of the engagement work involves the CICD Leadership Council, which is comprised of tribal leaders and businesspersons from across the country.

CICD engages in work specific to housing as well as other financial and economic development areas. They have prepared reports and data regarding Native CDFIs and their crucial role in financing housing development in Indian Country, costs of and barriers to Native American homeownership and barriers, and shortening the Title Status Report timeline. The CICD is engaged in continuous outreach in Indian Country regarding housing issues, and in particular opportunities and barriers for development of affordable housing. There are a lot of resources available (grants, loans, tax credits, and other financial incentives), and part of the CICD role is to figure out how those resources can be more effectively deployed in Indian Country by identifying bottlenecks, barriers, and lack of information.

Next, the panel addressed some successful approaches. One of the goals that the Federal Reserve is working on is to increase systemic and ongoing involvement in Indian Country, rather than just episodic involvement in projects. The main role of the Federal Reserve is the financial policy-setting. Those decisions have a significant impact on funding that is available to finance affordable housing. However, the Federal Reserve also seeks to bring people together to make the connections that can benefit both, such as lenders/investors and tribal leadership and housing professionals. One of these initiatives is "Investment Connections," through which non-profits put forward proposals under the Community Reinvestment Act, and then have those non-profits make the pitch to investors. The Federal Reserve is working with Tribal organizations in the same capacity.

CICD has developed a website with substantial information on the Federal Reserve outreach efforts: <https://fedcommunities.org/>. That site has a specific tab for information on

housing: <https://fedcommunities.org/articles/housing/>. The panelists encouraged people to review the website and to reach out to the CIDC. CIDC wants to make sure they have accurate information and that they are “getting it right.” They also want to know if they have the “right entry points” into tribes or tribal enterprises. Outreach is very much appreciated and helps them carry out their missions.

This presentation was followed by a video update from Pete Upton, Chairman of the Native CDFI network. Native CDFIs are on the front line of bringing investment and financing into Indian Country. Mr. Upton noted that the President’s “skinny budget” proposes zeroing out seed money financing for CDFIs, including Native CDFIs. This would be disastrous. Native CDFIs provide critical help in getting mortgages, business investment, and other financial infrastructure for Indian Country. The seed money is critical, because there is still a broad need for funding. In addition, Native CDFI has had promised funding frozen.

d. Panel 3: FHLB Pathways—Empowering Tribes to Achieve their Housing and Economic Goals.

The next panel was on Empowering Tribes to Achieve their Housing and Economic Goals. The panelists included Tom Dapice (FHLB San Francisco), Alexandria Murnan (Travois), Michael Vantrease (Legacy Bank), and Dave Cade (Dry Creek Rancheria). FHLB is the Federal Home Loan Bank system. The FHLB has eleven banks in districts throughout the country. Each has housing and economic development programs for tribes. Their mission is to provide funding to member institutions to increase and expand the availability of funds for residential mortgage and community development lending nationwide, and to support affordable housing and community development. They are not a federal agency, and while they do not make home loans, they do loan money to other banks and CDFIs. They also provide loans to support members’ community lending efforts, provide grants for production and preservation of affordable housing and for down payment assistance programs.

The focus of the presentation was on the grant program. Each federal home loan bank contributes 10% of its income to affordable housing grants. They must assist with housing for families that are at or below 80% of area median income (AMI). These grants are available on an annual, competitive basis. The size of the grants is between \$1 and \$2 million. The grants fund new construction, rehabilitation for single-family and multi-family developments. They also fund construction and permanent financing. These programs can be combined with other funding sources, such as LIHTC, IHBG, and others.

The panel then discussed how FHLB funding was used in a specific tribal project by the Dry Creek Rancheria Band of Pomo Indians in California. Dry Creek Rancheria was able to get two separate FHLB grants for vertical construction, in a total of \$1.6 million, which was critical to completion of the project. The funds are obtained through a competitive process, and every district has its own implementation plans, so applicants have to target their application to the specific requirements of each district. One factor across all the districts is serving very low-income individuals, such as below 30% and below 60% of the AMI. Also, if an applicant is serving elders or people with disabilities, the applicant may receive points in the application scoring for those services. The districts have also listened to tribes in fashioning their point scoring to recognize

unique attributes for serving Indian Country. The panelists recommended that tribes talk to their local bankers. If the local bankers are not interested or able to help with a tribal housing project, tribes and TDHEs can look at bank websites to see which ones have tribal housing programs.

Many banks have down payment assistance programs, many of which are specifically geared towards tribes and TDHEs. For example, the Federal Home Loan Bank's AHP Set-Aside Homeownership Program provides funds for down payment assistance for the purchase or rehabilitation of a home. Its funding is available on a first-come, first-serve basis. The panelists also discussed some of the efforts that the banks take to help tribes overcome challenges with the program. For example, the banks help make sure that tribes meet application deadlines. The panelists also noted that tribes frequently do not apply for the programs because they think their program does not meet the bank's criteria. As a result, the panelists encouraged tribes to contact the bank to discuss how the tribes can structure their applications to meet the criteria.

IV. NAIHC Breakout Sessions

We attended a number of the breakout sessions at the Annual Convention and provide a summary of those below.

a. Using State Housing Dollars to Fund Supportive Housing

Zoe LeBeau, CEO of Beauxsimone Consulting, Alston Turtle, Vice Chairman of the Ute Mountain Ute Tribe, and Katie Symons, CFO of Beauxsimone Consulting gave a presentation on using state housing dollars to fund supportive housing. Ms. LeBeau commented that supportive housing is a cost-effective, outcome-drive solution to ending homelessness. Supportive housing serves families and individuals struggling with untreated trauma, mental health, and/or other disabilities. Along with that, it provides subsidized housing with supportive services.

Permanent supportive housing is structured to be independent living and is focused on helping tenants stay in the units. Ms. LeBeau stated that the programs recognize that tenants will violate the lease many times. As a result, the housing managers do not evict the tenants for lease violations unless the violation is something that is a danger to the tenant or others. The goal is to focus on treating trauma and helping them adjust to living in housing. Ms. LeBeau noted some of the benefits of permanent housing, including reducing the use of crises, reducing recidivism rates, and ending the cycles of homelessness.

Ms. Symons discussed some of the state funding available for supportive housing. For example, the California has the Homekey for Tribes; Washington State has the Apple Health and Homes program; Colorado has a housing development grant; and Oregon has the Oregon Housing Community Services program. Some tribes partner with state and local supportive wrap-around service programs or use the tribes' existing programs when developing supportive housing.

Mr. Turtle gave an overview of the Ute Mountain Ute Tribe's supportive housing program. He described how his Tribe structured the program to incorporate their tribal culture, including designing the buildings to include tribal art and culture. Mr. Turtle stated that incorporating tribal

culture was key to helping the supportive housing participants feel a part of their community and celebrate their tribal identities.

b. Selling Tribal Fee Lands

This session focused on the consequences of the Non-Intercourse Act, 25 U.S.C. 177, enacted in 1834, which prohibited any tribes from selling any land unless the same be made by treaty or convention under the Constitution. This has been interpreted in recent years (mainly by attorneys for title companies) to prohibit tribes from selling fee lands without Congressional approval, or to at least raise some questions about whether it is legal to do so.

On its face, the Non-Intercourse Act language is a restraint on the alienation of Indian lands. However, based on language in the statute, once “Indian title” has been extinguished there is no longer such a restraint on alienation, and courts have generally agreed with this position. This is consistent with Congress’ intent: the restraint on alienation was meant to apply to trust lands. There is a Supreme Court case that addresses the issue, *Bates v. Clark*, 95 U.S. 204 (1877), which sets out a useful analysis on this point. However, because of ongoing ambiguity, some tribes have specific legislation exempting them from the Non-Intercourse Act.

In part because of that ambiguity, some title companies are interpreting the Non-Intercourse Act to apply to tribally-owned fee lands. Further, some title companies are taking the position that a tribe needs the permission of the DOI to alienate fee lands, even lands that have never been part of a tribe’s reservation or aboriginal lands.

One of the presenters gave an example of a matter she is dealing with. Her client is a Tribe in Northern California. The Tribe bought some land as an investment in Hawaii. This land was never part of the Tribe’s reservation or its aboriginal territory. Yet the title company refused to issued title insurance unless the DOI provided its consent to the transfer, citing to the Non-Intercourse Act.

DOI issued a letter in December 2008 stating that off-reservation lands never owned in restricted status or trust are not subject to the Non-Intercourse Act. However, title companies (not all, but a number of them) still insist on getting some kind of communication from DOI saying that the specific transaction is not governed by the Non-Intercourse Act. This requirement is burdensome, time-consuming, and expensive. If a tribe is running into this problem, they should have their legal counsel try to work with the legal counsel for the title company to resolve the issue. There is also an ongoing effort to get national legislation that would fix this issue for all tribes across the board.

Another issue that has come up in recent years is that title companies are starting to require that tribes waive their sovereign immunity when the tribe is purchasing land in order to get title insurance for the land that is being sold. This is contrary to common sense, because the party who would be liable—i.e., who would need to be sued—is the seller not the buyer. The presenters indicated that there are title companies who are easier to work with on this issue. One of the participants stated that they had just created a tribal-specific title company to address these issues. The name of the company is National Tribal Title Services. One of the underwriters and other

advisors were present. They noted that the Non-Intercourse Act is still an ambiguous issue, so it is not clear how they would handle issuing a title insurance policy on a sale of fee land by a tribe.

c. HUD 184—The Most Underutilized Program—Borrowers Tribes/TDHEs

Nancy Bainbridge, EVP/Director of Tribal and Construction Lending Department of the Chickasaw Community Bank, gave a presentation on the HUD Section 184 Indian Housing Loan Guarantee (“Section 184”) program. The Section 184 program provides a loan guarantee to Native American borrowers in the event of borrower default, through a 100% loan guarantee that HUD provides to lenders. Section 184 allows Native American borrowers to purchase a home with a low down-payment and flexible underwriting. The goal is to increase the lending opportunities for housing in Indian communities.

Tribes, TDHEs, and individual tribal members can all borrow funds with a Section 184 loan guarantee. Tribes can use Section 184 loans for many types of housing programs, including low-income housing, lease-to-own programs, and elder housing. Section 184 loans can also be used for a variety of types of housing, including single-family homes up to fourplexes, condos, group homes, and manufactures homes. The only type of housing specifically excluded is transitional, temporary housing. Another benefit of a Section 184 loan is that these loans can be assumed, meaning that if a tribe uses Section 184 loans for a lease-to-own program, a tribal member can assume the Section 184 loan at the end of the lease period of the program.

Ms. Bainbridge commented that there are no income requirements for the Section 184 program. The maximum amount of funding that a borrower can borrow depends on the housing prices of the county in which the home is located. This can be beneficial for tribal members who are not low income but yet are unable to afford a standard home loan. Borrowers can use Section 184 loans in an expanded area of the United States, including areas both on and off of tribes’ reservations. If a tribal member defaults on a Section 184 loan for a home on tribal land, the land itself remains trust land, so the tribe does not lose the land during a foreclosure. The collateral for the loan is the tribal member’s leasehold interest in the land, not the land itself.

d. Title VI Loan Program—Misunderstood and Underutilized

Nancy Bainbridge, EVP/Director of Tribal and Construction Lending Department of the Chickasaw Community Bank, gave a presentation on HUD’s Title VI Loan Program. The purpose of Title VI is to assist IHBG recipients who want to finance eligible affordable housing activities but are unable to secure financing without the assistance of federal guarantee. Title VI effectively allows tribes to leverage their IHBG funds to secure federal financing.

Ms. Bainbridge remarked that Title VI loans can be used for Indian housing assistance, housing development and services, housing management services, crime prevention and safety activities, and model activities. It can also be used to create new housing, rehabilitate housing, build infrastructure, construct community facilities, acquire land to be used for housing, prepare architecture and engineering lands, and fund financing costs. Ms. Bainbridge stated that Title VI loans are unique and flexible in that they can be customized to meet each tribe’s specific needs. The

tribe can use the loan for projects on fee simple land, allotted land, tribal trust land, and fee simple restricted land.

Ms. Bainbridge commented that the loan collateral is a pledge of IHBG funds, but the bank would not actually have any access to the IHBG funds if a tribe defaults on the loan. The IHBG funds are simply there as collateral and HUD guarantees 95% of loan. However, because it is a loan guarantee program, a tribe must repay the loan to the bank. The terms are dependent on the program for which the loan will be used.

e. Innovations and Changes in the Low-Income Housing Tax Credit (LIHTC) Program.

This session was presented by Lorna Fogg and Robin Thorne from RTHawk. They began with a brief overview of how the LIHTC program works, before outlining the innovations and changes. One of the changes that has been implemented concerns the restrictions that limit LIHTC projects to tenants who are at 60% or lower of the AMI. The new rule allows tribes to have some households at 80% of the AMI, so long as the average income in the project is at 60% AMI or lower. Incomes must be certified at move-in, but they may increase over time.

Another item that some states have finally recognized is that for LIHTC projects that are for homeowners, actually providing homeownership to tenants is optional. In contrast, some states treated these programs as mandating conveying the homes at year 15 to the tenants. This is not a requirement, and having it optional means that the tenants are not required to buy the home. For very low-income tenants, purchasing the home is not feasible, and a mandatory program would require them to either buy the home or move out.

Some states have tribal set-asides for LIHTC programs. The way that these set-asides worked was that tribes were only eligible to compete for the tribal set-asides, meaning that the more rural tribes would often be on the outside looking in while tribes that were closer to urban areas would get the LIHTC allocations year-after-year. Tribes are now able to compete in other categories, meaning that rural tribes can compete for rural set-aside LIHTC allocations in addition to competing for the tribal set-asides.

One of the on-going current efforts is to get Fannie Mae and Freddie Mac to invest in tribal LIHTC projects. Because of the structure of these entities, their involvement can result in better pricing. The last time that these two entities dropped out of the tribal LIHTC program, tribes engaged in a letter-writing campaign to get them back in. That campaign worked, and Ms. Fogg and Ms. Thorne suggested that we start a new letter-writing campaign to again involve Fannie Mae and Freddie Mac in the tribal LIHTC projects.

Previously, in order get additional credits in an application, you had to be in certain designated areas by HUD. Now those areas have been expanded so that tribal projects can more easily take advantage of the additional credits, which allow for better pricing. This means tribes get a 30% boost. There is proposed legislation to make this mandatory for tribes across the board. In addition, tribal funding into a project has been revised to qualify for the 9% LIHTC projects, which allows tribes to fill in with gap funding where needed without increasing the financial risk

for the project. The legislation that is pending in Congress (the Affordable Housing Credit Improvement Act of 2025, or (AHCIA)) has some potential benefits for tribes, such as the mandatory 30% boost for tribes by defining Indian areas as “difficult development areas” (which are the areas that get a 30% boost). The AHCIA would also add Indian tribal members and NAHASDA-assisted units to the list of selection criteria to be considered in an LIHTC Qualified Allocation Plan.

Other innovations that Ms. Fogg and Ms. Thorne addressed were the following. First, most LIHTC projects have to use multiple funding sources, because the LIHTC pricing and allocations generally do not cover all the costs for developing an affordable housing project. Second, some projects will now include mixed income residents, so that some of the units are constructed with LIHTC investment funding, and others with private investment without income-eligibility requirements attached, to expand the sources of funding and income-generating potential. Third, LIHTC can be used for either new construction or rehabilitation; there are now projects coming out that blending the two. Fourth, many tribes are moving into the development of supportive housing, which includes services in addition to affordable housing for particularly vulnerable families. These additional services bring in additional sources of funding. Fifth, additional financing is leveraged by using rental assistance vouchers, either project-based vouchers or individual vouchers.

f. Using New Markets Tax Credits for Housing.

This session was presented by Adam Rose of Travois. New Market Tax Credits (NMTC) provide a tax credit for certain kinds of development. Other than providing a tax credit for investment, NMTC is significantly different from LIHTC. While NMTC has typically been used for community development projects (education, community buildings, head start, etc.), it can be used for housing under certain specific circumstances. Single family, residential rental properties cannot be funded with NMTC. However, if you are building homes for immediate homeownership, a tribe can use NMTC. Travois is aware of one tribe (Tohono O’odham) which is using NMTC for a homeownership project.

NMTC will not cover the entirety of the project cost. The approximate percent of coverage is around 20% - 30% (whereas LIHTC usually covers between 60% - 70%). In this program, you do not apply to the State for an allocation of tax credits. Instead, you apply directly to a Community Development Entity (CDE). It is the CDEs who get the allocations from the Treasury Department. Each CDE has a different service area and investment goals. Travois is a CDE and dedicates all its NMTC allocation to tribal projects. There are a couple of other Tribal-specific CDEs. The program also has specific geographic areas where the NMTC can be used. These geographic areas are very specific, and you need to be flexible. But even if you are in a non-qualified tract, your project might qualify by having the population you serve or all your employees be low-income.

One of the big challenges to NMTC is the requirements for how a project has to be structured, which are very complex. The Tribe/TDHE has to bring in a significant amount of financial leverage. This investment along with other investments is brought into an investment fund. So, to start you must have a significant amount of leverage at hand. The CDE then takes a percentage fee from the investment fund. The investment fund is then loaned into the CDE, which

sends it to a Tribally owned QALICB entity that develops the project. The NMTC that is available is 39% of the investment. You need to aim for getting NMTC in an amount that equals the total development cost, so it pencils out for the investor.

While it is a complex structure, it has worked in Indian Country. Sometimes, it is helpful to work with several CDEs. To be viable, however, the tribe or TDHE has to be able to bring a significant amount of its own resources for leverage. The application process is different than LIHTC. There is no specific application timing or deadline. You need to approach the CDE when you have the commitments of funding to be leveraged. You can start the discussions with the CDE before you have the commitments just to begin the relationship and education. However, you will not be able to get firm commitment of LIHTC before you have the financing firmly committed.

Because the NMTC has a seven-year compliance period, you must be able to show that the business that you want to finance will be able to continue for at least the next seven years. For a homeownership program, you must be able to show that you will be able to construct these homes for the next seven years. For example, you must show that you will be able to build one home for each of the next seven years. Since the NMTC is not going to cover all costs, you should think of NMTC as a source to cover things like cost overruns, to add scale, to add elements or features to achieve an ideal vision, or to reimburse the Tribe for funds already invested.

g. Title Insurance in Indian Country

Sarah Lawson, a consultant at National Tribal Title Services (NTTS), and Megan Powell, Underwriter at National Tribal Title Services, gave a presentation about title insurance in Indian Country. The presenters consequently created NTTS as a title service company that is responsive to and understanding of tribes. NTTS works with trust land, restricted land, allotted land, fee land, HUD 184 loans, tribal housing authorities, sovereign wealth funds, section 17 corporations, tax credit transactions, infrastructure development, and other transactions involving tribal governments or tribal entities.

The presenters commented that a title insurance policy is a contract between the insurer and the named insured on the policy. Under the terms of the contract, the insurer agrees to indemnify the insured against the loss they incur as a result of any covered risk outlined by the policy. Title examiners review the historical chain of title to the property to indemnify the current owner of the property and those who have rights to the property (e.g., easement holders, lienholders, etc.). Property owners only pay for title insurance policy once, and then it is good for as long as they own the property. Lenders typically require borrowers to obtain a title insurance policy as a condition of granting the loan. In turn, buyers typically require the seller to provide them with a policy as a condition of purchase.

There are some situations in which title insurance is not needed. For example, a title insurance policy is not required for land held in trust or restricted fee, but it is usually required for unrestricted fee land. Another situation in which title insurance is not needed is when a tribe requests that fee land be transferred to trust. However, some form of title evidence is required, such as a title report.

The American Land Title Association (ALTA) promulgates the forms used in title insurance policies so that the forms are consistent across the industry. These forms include owners' policies, loan policies, endorsements, guarantee products, and closing protection letters. Records for title are either kept in the U.S. Bureau of Indian Affairs' BIA Land Title Records Office (LTRO). The LTRO maintains title records for property held in trust or restricted status. These records are not accessible to the public. In contrast, for properties held in unrestricted fee, title records are maintained at the local Clerk & Recorder's Office. These records are accessible to the public. Additional title records may be maintained by a tribe. They are generally not accessible to the public.

The presenters noted that there is a difference between title status reports (TSRs) and title commitments. Title examiners employed by the LTRO office can produce a TSR identifying the vesting and encumbrances on the title. There is no title insurance produced as a result of a TSR. In contrast, title examiners employed by a title company can produce a title commitment identifying the vesting and encumbrances on the title. This commitment is a precursor to a title policy, which provides insurance against covered risks outlined in the policy. When insuring property involving trust or restricted fee land, the title company will order a TSR and use the information contained in the TSR to prepare the title commitment.

V. Upcoming Events: NAIHC Legislative Committee and Legal Symposium

The NAIHC Legislative Committee meets via videoconference monthly, usually at 10 AM Pacific time on the first Thursday of the month. The next NAIHC event is the Legal Symposium, which will take place on November 17 - 20, 2025 at the Choctaw Resort and Casino, Durant, Oklahoma.

Conclusion

If you have any questions about this memorandum or any of the topics discussed within, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com) or Cari Baermann (cbaermann@hobbsstrauss.com). Both may also be reached at 503-242-1745.