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## MEMORANDUM

October 7, 2016

To: Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *NAIHC Legislative Committee Meeting*

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This memo reports on the monthly NAIHC Legislative Committee meeting, which was held on October 6 (by teleconference). The meeting included updates in the following areas.

### 1. NAIHC Legislative Priorities Setting

NAIHC has initiated the process of setting legislative priorities for the organization to advocate for in 2017 and beyond. The first step is to solicit input from the various regional Indian housing associations on their ideas for legislative priorities. The goal will be to have that input in hand by October 2016, so that it can be organized and presented at the in-person meeting of the NAIHC Legislative Committee in conjunction with the Legal Symposium in Las Vegas in early December. The Committee will review and finalize the priorities, and then develop white papers for use at the Legislative Conference in February 2017 in Washington, DC.

Chairman Gary Cooper again urged members of the Committee to have their regions send in their regional priorities. So far, NAIHC has received priority lists from the Northwest, the Northern Plains, and Alaska.

Once the regional listings are received, NAIHC will organize these and create a larger list to be discussed at the in-person meeting of the NAIHC Legislative Committee in conjunction with the NAIHC Legal Symposium in December. That meeting will take place on Monday December 5 at 1:00 PM at the Mirage Hotel in Las Vegas.

### 2. Legislative Update: NAHASDA Reauthorization and 2017 Appropriations

Shawn Pensoneau gave the legislative update. Congress passed and the President signed a Continuing Resolution that will fund government at the current rate of operations through December 9. There will not likely be any more legislative work done between now and the election. All House members and 1/3 of the Senate are up for re-election, and they will be actively campaigning from now until Election Day. Shawn encouraged NAIHC members to look for campaign events and town halls at which they

can meet their legislators, in order to urge them to reauthorize NAHASDA and to fully fund the NAHASDA Indian Housing Block Grant appropriation.

After the election, Congress will hold a lame duck session. It will likely begin about a week after the election. What issues it will take up will depend significantly on the outcome of the election. Most likely there will be another extension of the Continuing Resolution.

No action has occurred since the last NAIHC Legislative Committee meeting. There are currently two active bills in Congress: H.R. 360, which was passed by the House, and S. 710, which passed its Committee and is before the full Senate floor. The status of NAHASDA reauthorization is still uncertain, but while prospects are not good for passage by the end of the session, NAIHC is taking all steps it can and looking at all options. The legislation still has a hold on it from Senator Lee (R-UT), who opposes the Native Hawaiian provisions as race-based and therefore unconstitutional. Because of his hold, the bill cannot pass through the Senate via unanimous consent. Therefore, to pass the bill it has to come up for floor debate, and given the limited legislative calendar, there is little chance of getting floor time.

There have been ongoing discussions with Senator Lee about options to drop the hold, particularly by Senator Barasso and his staff, but so far they have not borne fruit. NAIHC staff and the bill's proponents are looking at various other avenues, but there is no concrete strategy. One concept is to link NAHASDA reauthorization with other Indian bills that are also pending, specifically the Tribal Labor Sovereignty Act and the Indian Energy Act, into an "Indian Omnibus" bill. But we will not know the likelihood of success with this or other alternative approaches until after Election Day. Shawn says not to give up hope, but we are getting down to the wire for the final push.

Chairman Cooper gave a very brief update on IHBG formula negotiated rulemaking. The 9<sup>th</sup> and final meeting of the Committee took place a couple weeks ago in Oklahoma City. A final draft rule has been agreed upon and is going through internal HUD and then OMB clearance, after which it can be published as a final rule. The target is to publish by the end of this year.

### **3. Announcements**

Next week is the NCAI Annual Convention in Phoenix, Arizona. The Housing Subcommittee is chaired by NAIHC Chair Sami Jo Difuntorum.

The NAIHC Legislative Conference has been scheduled for March 6 – 8 at the Washington Court Hotel in Washington DC.

One of the participants (Denise Zuni, an attorney in New Mexico) raised the concern about FEMA and National Flood Insurance. In order to be eligible for FEMA's National Flood Insurance Program, tribes must participate in FEMA's ongoing survey

and mapping project. Ms. Zuni also raised a concern about HUD's recent determination that it will no longer approve Tribal foreclosure codes if they contain a provision for enforcing mortgages guaranteed by HUD in tribal court. HUD is now insisting that the codes must contain federal court jurisdiction to be approved, though they state that they are working on a remedy. This determination has created a two-tiered system, in which many tribes who already have had their mortgage codes approved by HUD can continue with the tribal court enforcement provisions in those codes, but tribes who are just trying to enter these programs cannot have the same provisions.

Another participant (Gabe Layman, in house counsel for Cook Inlet Housing Authority) announced that Senators Cantwell and Hatch have introduced a more detailed version of their Low Income Housing Tax Credit (LIHTC) legislation. There are a handful of provisions in the bill that are very favorable for tribes, and will give tribes a stronger ability to compete for LIHTC. Gabe said the bill could be a "huge game changer" for tribal access to and competition for LIHTC. Senators Hatch and Cantwell want to keep this a bipartisan bill, and are continuing to seek co-sponsors from both sides of the aisle. The bill will not pass this year, but they are laying the groundwork for a more serious push next session.

Gabe also said that, depending on the outcome of the election, NAIHC and Indian Country may have the opportunity for a strong push to increase the NAHASDA IHBG appropriations. HUD's recently released needs study shows both that NAHASDA has been effective and that the need is still significant in Indian Country. That combination provides a very strong argument for increased funding. We need to stay focused and develop a clear and consistent message, and be ready to generate a campaign at the beginning of the next session.

NAIHC has moved its offices. The new offices are located at 122 C St. NW, Suite 350. The location is very close to Union Station and House and Senate Offices. NAIHC will host an open house on September 28, 2015 – in conjunction with the White House- Tribal Nations Summit (the last one of the Obama Administration).

The NAIHC Legal Symposium will be held at the Mirage Hotel in Las Vegas, NV, from December 5 through December 7. The NAIHC Legislative Committee will be meeting on Monday, December 5, at 1:00 PM. There is also a golf tournament scheduled for Sunday, December 4, for those who are interested.

The next NAIHC Legislative Committee meeting will be held on November 10, 2016, 1:00 PM Eastern, 10:00 AM Pacific, by telephone.

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