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MEMORANDUM

November 14, 2016

To: Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *NAIHC Legislative Committee Meeting and Election Update*

This memo reports on the monthly NAIHC Legislative Committee meeting, which was held on November 10 (by teleconference).

1. NAIHC Legislative Priorities Update

NAIHC is setting legislative priorities for the organization to advocate for in 2017 and beyond. Chairman Gary Cooper urged members to send in their regional and individual priorities. So far, NAIHC has received priority lists from the Northwest, the Northern Plains, and Alaska, and a total of eleven priority issues. NAIHC will circulate a summary 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 1:30 PM at the Mirage Hotel in Las Vegas.

2. Election Update

Paul Moorehead provided an update on the national election results and transition to President-elect Donald J. Trump's administration. President-elect Trump has had a transition team in place for several months, headed by New Jersey Governor Chris Christie. (The day after the meeting, news broke that Governor Christie had been removed from his role and that Vice-President-Elect Mike Pence will head the team.) The transition team is currently reviewing names for cabinet and other top positions at each agency, beginning with positions at agencies covering national security issues. Names for positions at HUD and DOI may not be seriously considered for several weeks. However, if NAIHC members are interested in being considered for any roles in the new administration, now is the time to submit names and send resumes.

In Congress, Republicans will control both the House and the Senate. The makeup of the Senate will be 52 Republicans and 48 Democrats. The Democrats gained two seats in the Senate. In the House, the final makeup is still pending while election results for several seats are being reviewed. Currently, the Democrats have gained six seats.

Beginning next week, Congress will hold a lame duck session. NAIHC is hoping that legislators will see wisdom of passing pending legislation to have a clean slate to begin the new session, including reauthorization of NAHASDA. However, many in Congress appear to be pushing to do the bare minimum while waiting for the new administration, and may simply pass another extension of the Continuing Resolution to fund the government.

Chairman Cooper discussed NAIHC's contingency plan to get NAHASDA reauthorized in light of the current atmosphere. 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.

NAIHC will closely monitor Congress next week. If it appears that Congress will not move on passing pending legislation during the lame duck session, NAIHC plans to work with NCAI to develop a consensus position on the two current NAHASDA bills at the NAIHC Legal Symposium. NAIHC has asked its staff to merge the Senate and House versions of bills, along with original draft bill, with language outlined in different colors so it will be easy to identify which language came from which bill. The goal would be to have a draft bill to circulate to all NAIHC members soon after the Legal Symposium for review and comment. NAIHC and NCAI would then present the consensus bill to the new Congress.

3. The Flood Protection Act of 1973 and Indian Housing Block Grant Funding

Denise Zuni, an attorney in New Mexico, raised a concern about FEMA and the National Flood Insurance Program. The Flood Protection Act of 1973 and HUD regulations prohibit the use of federal funds, including Indian Housing Block Grant (IHBG) funds, for acquisition and construction purposes in an area identified by FEMA as having special flood hazards, unless the recipient participates in FEMA's National Flood Insurance Program. In order to be eligible for FEMA's National Flood Insurance Program, tribes must participate in FEMA's ongoing survey and mapping project. In the past, FEMA has conducted flood mapping over tribal lands without authorization.

Ms. Zuni raised that HUD's environmental regulations and floodplain management regulations exempt states from participating the National Flood Insurance Program, and tribes should be exempt as well. Participants discussed how this issue was raised at NAIHC's Annual Convention in 2015, where some felt that tribal leaders should have input. Participants agreed this issue will be further discussed at NAIHC's Board Meeting.

4. Section 184

Ms. Zuni also discussed 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 has taken the position that the codes

must contain federal court jurisdiction to be approved. 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. Additionally, the DOJ has approved MOUs between the VA or the USDA and tribes which allow tribal court jurisdiction.

This policy has affected several tribes and pueblos in New Mexico. Chairwoman Sami Jo Difuntorum discussed the issue with ONAP Deputy Assistant Secretary Heidi Frechette. HUD is currently prioritizing other issues, but said it is working on a solution. The affected tribes have sent their codes to HUD's litigation department for review.

The participants made the following two recommendations, which were both seconded without objection:

1. NAIHC will prepare a letter to HUD asking HUD to immediately review the tribal codes, and to propose a solution.
2. NAIHC will meet with DOJ in an attempt to find a solution/resolution.

Chairman Cooper will bring the recommendations to the NAIHC Board for action. Ms. Zuni will draft the letter to HUD, and will circulate the letter to those tribes and pueblos currently affected.

5. Announcements

The NAIHC Legal Symposium will be held at the Mirage Hotel in Las Vegas, NV, from December 5 through December 7. Everyone is encouraged to make reservations soon, as the room block is already running out of rooms. If rooms are not available, please contact NAIHC and they will try to add more rooms to the block. The NAIHC Legislative Committee will be meeting in person on Monday, December 5, at 1:30 PM, in the "St. Thomas A" room. NAIHC will hold a Board Meeting immediately following the Legal Symposium so that the Board is able to take immediate action on any resolutions.

There is also a golf tournament scheduled for Sunday, December 4, at noon, at Las Vegas National. A full agenda is available at NAIHC's website.

NAIHC's legislative conference will be held March 6 through 8, 2017, at Washington Court Hotel, in Washington DC. The NAIHC Annual Convention will be held June 27 through 29, 2017 in Nashville, TN. Additional information will be coming out shortly.

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.