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MEMORANDUM

January 5, 2017

To: Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *NAIHC Legislative Committee Meeting*

This memo reports on the monthly NAIHC Legislative Committee meeting, which was held on January 5, 2017 (by teleconference). The first announcement, from Committee Chair Gary Cooper, is that Shawn Pensoneau, the former NAIHC Government Affairs Director, has left NAIHC for a job with the Department of Interior. NAIHC will be advertising to fill his position.

1. NAIHC Legislative Priorities Update

NAIHC is setting legislative priorities for the organization to advocate for in 2017 and beyond. So far, NAIHC has received priority lists from the Northwest, the Northern Plains, and Alaska, and a total of eleven priority issues. A couple of regions requested additional time to send in their list of priorities, so this project is ongoing. Because some of the information went to Shawn and did not make it to anyone else at NAIHC, Chairman Cooper asked that this issue be set over to the February meeting so that an updated and complete list can be sent out for discussion. The goal will be to look at the comprehensive list to consolidate and identify top priorities and second-tier priorities. The two top priorities will always be reauthorization and appropriations, but the organization also wants to look at and advocate for other issues important to the NAIHC membership.

2. NAHASDA Reauthorization Update

NAHASDA did not get reauthorized at the end of the last Congress. NAIHC started a discussion in December, and the regions were asked to go back to their members and come back with proposed strategy. One strategy that has come back (and which has been approved by the NAIHC Board) is a two-part approach: (1) a one-line reauthorization of the existing IHBG section of NAHASDA for five years; (2) continue to pursue the full NAIHC reauthorization bill. I asked how this approach would work. Paul Moorehead (the NAIHC lobbyist) explained that the one-line bill would simply reauthorize just the IHBG section, not the substantive sections, so there would still be a need for a reauthorization of the substantive sections. Paul has raised this issue with some of the Congressional leadership, who have expressed support. However, a few of them

have noted that the one-line bill may not be seen as that benign, because there are some people in Congress who have some concerns about the substantive provisions of NAHASDA, and may see a one-line reauthorization as a means of avoiding the opportunity to have a substantive discussion. Overall, though, there is support and need for some kind of expedited approach, because any unauthorized program may run into trouble with appropriators. Paul noted that each year certain appropriators have asked for list of unauthorized programs, so it creates the concern each year – probably heightened for this year – that the appropriators are going to try and zero out funding for programs, like NAHASDA, that have not been reauthorized. Chairman Cooper and Gabe Layman (of Cook Inlet) have heard that there is a more concerted effort underway along these same lines for the current Congress. There are currently approximately \$310 billion in appropriated spending on programs that have not been reauthorized.

3. Update on the 115th Congress

The new Congress was sworn in and began work on Tuesday of this week. In Congress, Republicans 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 ratio is 238 Republicans to 197 Democrats. The relevant leadership positions are as follows:

The top leadership positions are:

Speaker of the House:	Paul Ryan (R-WI)
House Minority Leader:	Nancy Pelosi (D-CA)
Senate Majority Leader:	Mitch McConnell (R-KY)
Senate Minority Leader:	Charles Schumer (R-NY)

The leadership of various committees relevant to Indian Country, and in particular Indian housing, are the following:

House Appropriations

Chair:	Rod Frelinghuysen (R-NJ)
Ranking Member:	Nita Lowey (D-NY)

House Financial Services (jurisdiction over NAHASDA)

Chair:	Jeb Hensarling (R-TX)
Ranking Member:	Maxine Waters (D-CA)

House Natural Resources

Chair: Rob Bishop (R-UT)
Ranking Member: Raul Grijalva (D-NM)

House Ways and Means

Chair: Kevin Brady (R-TX)
Ranking Member: Richard E. Neal (D-MA)

Senate Appropriations

Chair: Thad Cochran, (R-MS)
Ranking Member: Patrick J. Leahy (D-VT)

Senate Finance

Chair: (Expected) Orrin G. Hatch (R-UT)
Ranking Member: Ron Wyden (D-OR)

Senate Banking, Housing and Urban Affairs

Chair: (Expected) (NEW) Michael D. Crapo (R-ID)
Ranking Member: Sherrod Brown (D-OH)

Senate Indian Affairs

Chair: John Hoeven (R-ND)
Vice-Chair: Tom Udall (D-NM)

The new Congress will have a lot of Indian issues on its agenda that NAHASDA reauthorization will have to compete with. Because of these priorities, and other priorities facing the new Congress (appropriations generally, Affordable Care Act, tax reform, etc.), it is not likely that NAHASDA reauthorization is going to get floor time or any consideration until early summer.

The nominee for HUD Secretary will be Ben Carson. We do not know much about his priorities for HUD or for Indian housing.

4. Section 184

Denise Zuni, an attorney in New Mexico, gave an update about an issue she has been following regarding 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. According to Ms. Zuni, the Office of Tribal Justice at DOJ does not have any concerns or issues with tribal court jurisdiction.

The HUD 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 she said HUD is working on a solution. The affected tribes have sent their codes to HUD's litigation department for review. But Ms. Zuni has heard that this issue has been put on the back-burner by HUD. She has drafted a letter that is under review by NAIHC, which will be finalized and sent to all NAIHC members to send to Congress and HUD on this issue. Ms. Zuni asked for an update on the status of the letter. Jason Adams said that the Board has had some back and forth on the draft letter based on some region-specific information. He asked for a word version of the letter so that they can make edits, and Ms. Zuni agreed to send it.

Another participant, nicknamed "Holiday," who is from the USDA in the Northern Plains. He has been working with tribes in North Dakota who have run into the same issue: HUD rejecting a tribal mortgage code with jurisdiction over mortgages in the tribal court. USDA has been approving such codes for enforcement of its loans.

This item will be added to the ongoing agenda for the NAIHC legislative committee. Jason Adams asked that there be a working group set up to develop to address this issue as well as how to work with USDA. There may need to be a Congressional approach to figure out how to get this addressed through the Farm Bill.

5. Announcements

NCAI has a presidential transition team meeting coming up on January 19 to discuss Indian issues with the Trump transition team. NCAI's Executive Council Winter Session coming up in February in Washington, D.C.

The NAIHC legislative conference will be held March 6 through 8, 2017, at Washington Court Hotel, in Washington DC. Registration information will be coming out

on the NAIHC website shortly (either today or tomorrow). Our firm can assist with setting up meetings with and talking points for your Congressional delegation.

The NAIHC Annual Convention (combined with the Amerind annual meeting) will be held June 27 through 29, 2017 in Nashville, TN. Additional information will be coming out shortly.

NAIHC will be hiring for the Government Affairs Director as well as for Training and Technical Assistance staff.

Denise Zuni asked that the FEMA flood mapping issue be added back to the agenda. This is an important issue for tribes that she has advocated for previously, but thinks that it got dropped in the transition from Shawn Pensoneau.

The next Legislative Committee Conference call will take place on Thursday, February 2, 2017, 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.