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GENERAL MEMORANDUM

February 9, 2017

To: Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: HUD Seeks Comments on Implementing Recommendations of Final Report on Coordinated Environmental Review Process

On February 7, 2017, HUD sent a Dear Tribal Leader letter asking for comments and feedback on its suggestions on how to implement or prioritize the Final Report recommendations on a coordinated Environmental Review Process. Tribes and TDHEs are invited to express comments in person at the upcoming NCAI 2017 Executive Council Winter Session, February 13 – 16, and at the NAIHC 2017 Legislative Conference, March 6 – 8, both to be held in Washington, DC. At each conference, HUD officials will provide an overview of the Final Report recommendations, and then will receive comments from attendees. Comments may also be submitted to HUD in writing (details on how to do so can be found at the end of this memo).

Background

NAHASDA provides tribes the right to exercise environmental review requirements that would otherwise be carried out by HUD. NAHASDA Section 105, 25 U.S.C. §4115. For those tribes that have the capacity in-house to conduct environmental review, it is both an exercise of the tribe's sovereignty and more efficient to have such reviews carried out by the tribe.

However, because Indian housing is often built on and involves leasing of trust lands, there are often additional, overlapping, and redundant environmental review requirements imposed by the BIA (in exercising their authority to review and approve residential leases on trust lands). Further, when tribes or TDHEs leverage their NAHASDA funds by using grant funds from other federal agencies (such as USDA – Rural Development), that agency's environmental review requirements will also apply. Thus, tribes and TDHEs in such circumstances will be required to undertake several different environmental reviews – all of which are intended to meet the same federal statutory requirements under the National Environmental Policy Act – because each federal agency has its own guidelines and procedures. The resulting administrative and legal costs in doing so take funds away from constructing homes.

In 2013, NAIHC proposed a legislative fix to NAHASDA Section 105 that would deem a tribe to have satisfied all applicable environmental review requirements that might apply to a multiple-funding sourced project if the tribe satisfactorily completed the applicable HUD environmental review process. The legislative proposal has not yet been adopted, as it was part of the proposed NAHASDA reauthorization bill that ultimately failed to pass out of the Senate.

In December 2014, Congress directed HUD to work with other federal agencies to develop a coordinated review process to simplify tribal housing development and related infrastructure needs. HUD led an interagency effort, working with tribes and TDHEs, to develop a coordinated environmental review process for housing and housing-related infrastructure. The interagency workgroup published its “Coordinated Environmental Review Process: Final Report” with recommendations to streamline the environmental review process on December 15, 2015. The Final Report included twelve recommendations:

1. Incorporate Environmental Review Documents by Reference;
2. Develop Common Categorical Exclusions;
3. Address Resource Deficiencies at BIA;
4. Provide Training for Agency Staff;
5. Provide Training for Tribes;
6. Continue Review of Related Environmental Laws and Authorities to Identify Opportunities for Greater Efficiencies;
7. Create Regional Consortia;
8. Explore the Development of an Interagency Environmental Review Automated Tool;
9. Explore HUD-Specific Regulatory and Policy Improvements;
10. Create More Predictable Funding Mechanisms;
11. Establish an On-going Environmental Review Interagency Workgroup; and
12. Explore Expanding the Scope of this Effort.

A copy of the Final Report is available here:

<https://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf>

HUD Seeks Comments on Implementing Recommendations of the Coordinated Environmental Review Process Final Report

Since publication of its Final Report, the interagency workgroup has continued to meet to consider how best to implement its recommendations. The workgroup provided a Status Report to NAIHC and NCAI, describing their current ideas and proposals. (Attached). On February 7, 2017, HUD also sent a Dear Tribal Leader letter asking for comments and feedback on the suggestions in the Status Report on how to implement or prioritize the Final Report recommendations. (Also attached).

Tribes and TDHEs can express comments in person at the upcoming NCAI 2017 Executive Council Winter Session, February 13 – 16, and at the NAIHC 2017 Legislative Conference, March 6 – 8, both held in Washington, DC. Our firm is attending the NCAI and NAIHC conferences, and can assist with drafting and presenting comments. Alternatively, comments may be submitted until March 7, 2017 to Hilary Atkin, Environmental Clearance Officer, at Hilary.C.Atkin@hud.gov, or by mail:

Ms. Hilary Atkin
HUD – Office of Native American Programs
451 Seventh Street SW, Room 5156
Washington, DC 20410

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Any questions about this memorandum may be directed to Edmund C. Goodman at egoodman@hobbsstrauss.com or at 503.242.1745.