



806 SW Broadway, Suite 900
Portland, OR 97205

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

April 10, 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, held by teleconference on April 6, 2017. Gary Cooper from Cherokee Nation Housing Authority, chaired the meeting. He introduced NAIHC's new Executive Director, Tony Walters, who began work on Monday of that week. NAIHC is reorganizing its administrative functions so that Tony will be leading NAIHC's advocacy efforts.

1. FY 2017 Appropriations

FY 2017 appropriations were funded only through April 28, 2017, pursuant to a continuing resolution adopted late in 2016. Congress will need to act before April 28, 2017 to put funding in place for the remainder of the fiscal year to avoid a government shutdown. There is no agreement yet in Congress on the outlines of a FY 2017 continuing resolution going forward. Congress is now set to go on a two week recess, leaving only a few legislative days before April 28, 2017 to pass an appropriations bill.

2. FEMA Flood Mapping

Denise Zuni, an attorney from New Mexico, gave a brief update on the FEMA flood mapping issue. The Federal Flood Disaster Protection Act of 1973 prohibits the use of federal funds for construction and rehabilitation on floodplains unless a community participates in the National Flood Insurance Program (NFIP) and purchases flood insurance. This prohibition is imposed on Indian Housing Block Grant (IHBG) funds by 24 CFR 1000.38 (the NAHASDA regulations). The prohibition also applies to Indian Community Development Block Grant (ICDBG) funds.

A tribe whose lands have been flood mapped by FEMA and have been designated as being in flood plains cannot use IHBG or ICDBG funds, or for that matter, any federal funds for housing construction or rehabilitation, unless the tribe participates in the NFIP, mitigates the flood risks, and purchases flood insurance. The vast majority of tribes do not participate in the NFIP. According to a January 2013 GAO Report, only 37 tribes participate in the NFIP.

States, however, have apparently received exemptions that allow them to spend public housing and Community Development Block Grant funds in those areas. 24 CFR 58.6(a)(3) (the HUD environmental regulations), and 24 CFR Part 55(b)(1) (the HUD floodplain management regulations), appear to exempt States from the prohibition, specifically in their use of HOME funds and Community Development Block Grant (CDBG) funds. If this is accurate, a Public Housing Authority can use HOME and CDBG funds, and perhaps HUD public housing funds, on floodplains even if a community isn't a member of the NFIP.

During the week of the NAIHC Legislative Conference, a group of New Mexico tribes presented a white paper on this issue to their Congressional delegation, raising two questions: (1) does FEMA have authority to map tribal lands without tribal consent? And (2) if so, can tribes get the exemption that states have. Ms. Zuni said that the presentations were well-received, and that they had a productive discussion with Congressman Steve Pearce and his staff about how to address the issue. His staff asked the Congressional Research Service (CRS) to look into the first question, and CRS is still researching. But they noted that FEMA's authorizing language is very broad. Congressman Pearce suggested that the best strategy would be to seek an exemption for Indian housing programs similar to the NAHASDA-based exemptions for Davis-Bacon and Indian preference. That is, if a tribe has its own flood control or flood mapping program, then the FEMA requirements would be pre-empted. This exemption could be provided through amendments to NAHASDA through a reauthorization bill. There are still details to be worked out, such as what the tribal program would have to involve to be able to pre-empt FEMA. The Congressman asked for letter of support from tribes for this approach. His staff (Patrick Cuff) will send out draft language for input from the tribes.

3. Economic Planning in Rural America

This item was on the agenda, but the main person involved – Jason Adams from Salish-Kootenai, was not on the call. The issue will be placed on the agenda for the next meeting.

4. HUD VASH

A number of tribes are involved with the HUD VASH program, and continue to work through issues with HUD and the VA as to make the program work more effectively. There will be a conference call among HUD VASH tribes on April 17, 2017 for further discussions.

5. NAIHC Funding Task Force

NAIHC has set up a separate "funding task force" to address advocacy for increased funding for Indian housing programs. The task force is structured like the Legislative Committee, anyone who wants to participate can. You can sign up via a link on the NAIHC website, and will get information regarding calls and agendas. The task force will meet twice a month by conference call (first and third Wednesdays). The first

meeting was on April 5, 2017, and there were 15 participants. They identified four issues from the legislative advocacy priority list that were funding-related, and will begin working on those issues:

- Increase IHBG annual appropriations
- Deliver Training and TA funds in accordance with NAHASDA, and to retain Training and TA in HUD ONAP, not PD&R
- Funding for homeless evaluation programs
- Allocated \$100 million a year (in non-IHBG funds) to combat methamphetamine issues in Indian Country

6. NAIHC Legislative Priorities

NAIHC is still developing the legislative priorities list. With the funding task for taking on four of the issues, there still remain a number of issues on that list. NAIHC is looking for volunteers to develop white papers on those issues, or to submit any information on those issues to NAIHC staff so they can put that information together for its advocacy efforts. Ms. Zuni volunteered to write the white paper on the FEMA issue. The issues are:

- NAHASDA reauthorization
- Improved Federal consultation process
- Advocacy for a single agency source of funding for infrastructure and site development
- Increase backing for “supportive services” for housing to enable wrap around housing services, including but not limited to relaxing restrictions on affordable housing
- Extend time for rebuilding demolished buildings
- Extend/expand the BIA HIP, ensure transparent application and evaluation process
- Direct TDHE grant eligibility for other HUD programs, such as HOME

7. NAIHC/Amerind Annual Convention

The NAIHC/Amerind Annual Convention will be held this year in Nashville, TN from June 27-29, 2017. The Legislative Committee will meet in person the day before the convention starts, on June 26, 2017. The time has not been set.

Tony Walters reminded the group that the deadline for submitting resolutions and proposed by-laws changes is coming up (he did not have the exact date handy, but it is at least a month prior to the convention itself to provide notice). The funding task force is going to work on a uniform funding resolution that can be considered on the floor. In the past, different regions have submitted differing funding resolutions, leading to some

confusion and the need for rushed negotiations at the convention. Having a uniform resolution agreed-upon prior to the convention will save time and energy.

To be able to make hotel reservations, you will have to first register for the convention.

One other item: NCAI is holding its mid-year conference June 12-15, 2017 at the Mohegan Sun Resort in Connecticut.

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.