



PREPARED STATEMENT OF
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NATIONAL AMERICAN INDIAN HOUSING COUNCIL
HOUSE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
LEGISLATIVE HEARING ON
THE “HELPING EXPEDITE AND ADVANCE RESPONSIBLE TRIBAL
HOMEOWNERSHIP ACT OF 2011” (H.R. 205)

November 3, 2011

INTRODUCTION

Good morning Chairman Young, Vice Chairman Boren, and distinguished members of the Subcommittee on Indian and Alaska Native Affairs. My name is Floyd Tortalita and I am the Vice-Chairman of the National American Indian Housing Council (NAIHC), the only national Indian non-profit organization dedicated to advancing housing, physical infrastructure, and economic development in tribal communities in the United States. I am also the Executive Director of the Pueblo of Acoma Housing Authority and an enrolled member of the Pueblo of Acoma.

I want to thank Representative Martin Heinrich for his leadership in introducing H.R. 205, and thank you Mr. Chairman, for the opportunity to appear today and provide NAIHC's views regarding the "Helping Expedite and Advance Responsible Tribal Homeownership Act" (H.R. 205), which was introduced in the House of Representatives on January 6, 2011.

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

Despite recent improvements in the delivery of housing assistance, Indian housing is still substandard when compared with housing available to other Americans. An estimated 200,000 housing units are needed immediately in Indian Country and approximately 90,000 Native families are homeless or under-housed. Overcrowding on tribal lands is almost 15 percent, and 11 percent of Indian homes lack complete plumbing and kitchen facilities.

Before I present NAIHC's views on H.R. 205, allow me to describe the framework in which Indian tribes provide housing and housing-related community development through the Native American Housing Assistance and Self Determination Act (NAHASDA).

Enacted in 1996, NAHASDA is grounded in the solid foundation of Indian Self-Determination, and was a result of the combined efforts of Indian tribes, tribal housing authorities, key congressional committees, and policymakers who came together to lay out a new vision for building strong tribal communities by providing quality and affordable housing and related physical infrastructure.

The beauty of NAHASDA is its consolidation into a single block grant, once-disparate Federal housing funding programs, and to make tribes—not HUD—the primary decision-maker when it comes to designing, developing and managing a housing and infrastructure plan that meets the unique needs of local tribal communities.

While the delivery of housing has substantially improved since 1996, many challenges remain, including working with Indian tribal trust lands, which are held in common and cannot be collateralized to attract private capital. In most tribal areas, inadequate or non-existent physical infrastructure and weak economic conditions in general are also major impediments to a more robust housing sector.

Without a doubt, NAHASDA is the single largest source of housing capital for Indian people and its success is dependent on how tribes can adequately address these other challenges.

INDIAN TRUST LANDS AND THE INDIAN LONG-TERM LEASING ACT OF 1955

Most Indian tribal land is held in trust or restricted status by the United States for the benefit of Indian tribes or individual Indians. Trust lands may not be sold but may be leased for a variety of purposes under applicable law. The *Indian Long-Term Leasing Act of 1955* (the 1955 Act) requires the approval of the Secretary of the Interior (Secretary) for certain types of leases of Indian trust and restricted Indian lands. Any lease that is not approved by the Secretary is invalid.

Timely processing of lease documents is critical, for not only housing but also for Federal loan guarantee programs. One program—the Indian Home Loan Guaranty Program—also known as the Section 184 Program, addresses the lack of mortgage lending in tribal communities by offering mortgage financing to eligible Native American individuals, families, tribes and tribally-designated housing entities. The Section 184 Program, administered by HUD, guarantees these loans that are made by private sector lenders.

Because lenders cannot foreclose on tribal trust lands, borrowers are obliged to have a valid leasehold, which is also subject to the approval of the Secretary. In the event of a default, the physical structure and leasehold interest are subject to foreclosure. The requirement of

secretarial review and approval for these leases, in this instance, is time-consuming and is a contributing factor to the low homeownership rate in Native communities.

Current law authorizes leases for up to 25 years with an option for one additional 25-year term for a total 50-year term for “public, religious, educational, recreational, residential, or business purposes...” NAHASDA authorizes lease terms for “housing development and residential purposes” for 50-year terms, but retains the requirement of secretarial approval to render the lease valid.

The Secretary, acting through the Bureau of Indian Affairs (BIA), administers the land leasing process, which can become lengthy, taking months—and sometimes years—hindering housing, infrastructure, and related economic development on trust lands. Because of these delays, and the desire by individual Indian tribes for more authority and tribal control in the leasing of their own lands, 45 Indian tribes have sought relief from the 1955 Act by petitioning Congress for specific, tribe-by-tribe Federal legislation.

Most recently, the Navajo Nation succeeded in amending the 1955 Act to develop and manage its own surface leasing ordinance. The amendments were made in 2000, and as a result, the Navajo Nation may enter into lease agreements and renewals of leases without the Secretary’s review or approval.

THE HEARTH ACT

In 111th Congress, the HEARTH Act was introduced in the House of Representatives by Representative Martin Heinrich and introduced in the Senate by Senator Byron Dorgan. During its review and consideration by the Senate Committee on Indian Affairs and House Natural Resource Committee, the bill was modified to include provisions related to tribal environmental review that were negotiated by the Senate Committee on Indian Affairs leadership, the Bureau of

Indian Affairs, the U.S. Department of the Interior's Solicitor's Office, Representative Heinrich, and the NAIHC. The bill was not enacted in the 111th Congress, and in January 2011, Representative Martin Heinrich re-introduced his bill and Senator John Barrasso, introduced S.703, the Senate companion bill.

We understand minor amendments to H.R. 205 have been considered in recent weeks to clarify the standards tribes must meet and to authorize the Interior Secretary to issue capacity-building grants to interested Indian tribes. NAIHC has reviewed these amendments and supports the amendments being added to H.R.205.

The HEARTH Act will offer capable and willing Indian tribes the authority to enact their own tribal leasing regulations and to negotiate and enter into certain leases without the approval of the Secretary. It will go a long way in strengthening tribal self-determination and tribal economies at the same time.

The two HEARTH bills—H.R.205 and S.703—deal with a fundamental aspect of tribal self-governance: control of tribal resources, in this case control over tribal land.

While NAIHC expects many tribes to seek authority to develop and manage their own surface leasing ordinances, it is appropriate that any such authority be made available to Indian tribes on a voluntary basis, leaving the decision as to whether to participate with the tribes themselves.

In addition, the HEARTH legislation directs the BIA to prepare and submit to the Congress a report detailing the history and experience of Indian tribes that have chosen to assume responsibility for administering the Indian Land Title and Records Office ("LTRO") functions from the BIA. NAIHC believes the report will provide valuable insight into the

challenges tribes have faced in assuming responsibility for the LTRO function, and at the same time illustrate “best practices” for other tribes to consider implementing.

CONCLUSION

The NAIHC strongly supports H.R.205 because it respects and fosters Indian tribal sovereignty and decision-making, expedites what can often be lengthy Federal reviews and approvals, will improve the delivery of Federal housing assistance, and will expand economic opportunity in tribal communities.

Thank you and if you have questions, I would be happy to answer them.