

PREPARED STATEMENT OF CHERYL PARISH, EXECUTIVE DIRECTOR
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ON BEHALF OF THE NATIONAL AMERICAN INDIAN HOUSING COUNCIL

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES

REGARDING THE “HELPING EXPEDITE AND ADVANCE RESPONSIBLE
TRIBAL HOMEOWNERSHIP ACT OF 2009” (H.R. 2523)

October 21, 2009

INTRODUCTION

Good Morning, Chairman Rahall, Ranking Member Hastings and Members of the Committee. My name is Cheryl Parish and I am the Executive Director of the Bay Mills Housing Authority in Brimley, Michigan. I am a member of the Bay Mills Tribe of Chippewa Indians in Michigan and I also serve as the Vice Chair of the National American Indian Housing Council (“NAIHC”). Thank you for inviting me to testify today to present our views on the “Helping Expedite and Advance Responsible Tribal Homeownership Act” or the HEARTH bill. This legislation is another important step in respecting tribal sovereignty and encouraging the development of tribal economies.

THE NATIONAL AMERICAN INDIAN HOUSING COUNCIL

The NAIHC was founded in 1974 to support and advocate for tribes and tribally designated housing entities (“TDHEs”). For more than 35 years, the NAIHC has assisted tribes achieve their primary goal of providing housing and community development for American Indians, Alaska Natives and native Hawaiians. The NAIHC consists of 266 members representing 463 tribes across the U.S., and is the only national Indian organization whose sole mission is to represent Native American housing interests throughout the Nation and provide its members with training, technical assistance, research, communications and advocacy.

As its core mission, the NAIHC provides invaluable capacity-building services to tribes, their Indian housing authorities and TDHEs. These training and technical assistance services include on-site technical assistance, tuition-free training classes, and scholarship programs that help offset the cost of attending specific training sessions, such as the Leadership Institute, a low cost professional certification course for Indian housing professionals.

THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

Before I address the HEARTH bill specifically, please allow me to take you back more than two decades in Indian housing when beginning in the early 1990s, Indian tribes, tribal housing authorities, and others, came together to craft a new vision of how housing and housing related community development programs and services should be administered in the era of Indian Self-Determination. The NAIHC was instrumental in shaping the debate and in drafting what became the *Native American Housing Assistance and Self-Determination Act of 1996* (“NAHASDA,” as amended, 25 U.S.C. §4101 *et seq*).

Over the past 40 years, tribes have assumed ever-greater responsibility for the design, development and delivery of programs and services that were once exclusively the domain of the Federal government. Starting with the *Indian Self-Determination and Education Assistance Act of 1975* (“ISDEAA,” as amended, 25 U.S.C. §450), Indian Self-Determination is the hallmark of all successful initiatives aimed at improving the lives of Native people including health care, education, law enforcement and others. In attempting to repeat these successes in the realm of housing, in 1996, Congress determined that in providing Federal housing services to Indian communities, the U.S. should “recognize the right of Indian self-determination and tribal self-governance by making such assistance available [...] directly to the Indian tribes or tribally designated entities.”

NAHASDA is well-rooted in the time-tested principles of local decision-making and self-sufficiency. The primary objective of NAHASDA is to promote affordable housing that is decent, safe and healthy. Since its enactment, NAHASDA has enhanced Indian tribal capacity to address the substandard housing and related physical infrastructure conditions by encouraging greater self-management of housing programs, greater leveraging of scarce Indian Housing Block Grant (“IHBG”) dollars, and greater access to private capital through Federal loan guarantee mechanisms.

Housing activities that may be funded with NAHASDA assistance include new home construction, rehabilitation, acquisition, physical infrastructure, and various support services. Housing assisted with these funds may be either for rental or for homeownership. NAHASDA funds can also be used for certain types of community facilities if the facilities serve eligible, low-income residents.

NAHASDA is not just about constructing buildings—it is about building communities. Historically, the lack of significant private investment, well-functioning housing markets and dire economic conditions in most Indian communities have all contributed to require a vigorous Federal investment in housing and community development in tribal communities. Since Fiscal Year 1998, more than \$8 billion in Federal housing assistance has been invested in Indian Country and has helped Indian families make down payments on homes, make monthly rents, helped with home rehabilitation and build new housing

units. Without a doubt, NAHASDA is the single-most important housing tool for Indian people.

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

As successful as NAHASDA has been in the 13 years since enactment, it is not an island unto itself in the world of Federal Indian laws and policies. Housing and community development is inextricably linked to tribal landholdings and their unique legal status. Most Indian tribal land is held in trust or restricted status by the United States for the beneficial ownership of Indian tribes or individual Indians. While trust lands may not be sold, they may be leased to Indians or non-Indians for a variety of purposes under applicable law.

The *Indian Long-Term Leasing Act of 1955* (the “1955 Act,” 25 U.S.C. §415) requires the approval of the Secretary of the Interior (“Secretary”) for the leasing of Indian trust and restricted Indian lands for a variety of purposes. The regulations implementing the 1955 Act indicate that they apply to “Indian land,” which is defined as “any tract in which an interest is owned by an individual Indian or tribe in trust or restricted status.” 25 C.F.R. §162.102.

The 1955 Act authorizes leases of Indian land for up to 25 years with an option for one additional 25-year term -- for a total 50-year term. These leases may be for “public, religious, educational, recreational, residential, or business purposes...” As an aside, NAHASDA authorizes leases of trust or restricted Indian lands for “housing development and residential purposes” for 50-year terms but retains the requirement of Secretarial approval to render the lease valid.

Under the 1955 Act, the Secretary, through the Bureau of Indian Affairs (“BIA”), is responsible for administering the land leasing process and any lease that is not approved by the Secretary is invalid. Before approving a lease, the Secretary must consider certain factors such as:

- The proposed use of leased lands with the use of neighboring lands;
- The height, quality and safety of structures or facilities to be constructed on leased lands;
- The availability of police, fire protection and other services;
- The availability of judicial venues for criminal and civil causes arising on leased lands; and
- The environmental effects of the proposed uses of the leased lands.

Leases negotiated by an Indian tribe or an individual Indian may include remedies agreed upon by the parties including, for instance, a requirement that disputes be heard in tribal

court. Leases may also be advertised or negotiated by the Secretary through the BIA and the applicable regulation provides that in reviewing a negotiated lease for approval, the BIA “will defer to the landowners’ determination the lease is in their best interest, to the maximum extent possible.” 25 CFR §162.107. Under the 1955 Act, the Secretary has authority to cancel leases if there are violations of lease terms, and remains responsible for ensuring tenants meet their payment obligations to landowners and for ensuring tenant compliance with any operating requirements contained in the lease agreement. The Secretary may also take “immediate action” to recover possession from trespassers operating without a lease, and may take “emergency action” to preserve the value of the land. 25 CFR §162.108.

The Indian land leasing approval process can be lengthy, taking months and sometimes years, which can hinder housing, infrastructure, and related economic development on Indian lands. Because of these delays, and the desire by individual Indian tribes for more authority and latitude in the leasing of their own lands, some 45 Indian tribes have sought relief from Congress for amendments to the law through specific, tribe-by-tribe Federal legislation. As you can imagine, winning enactment of specific Federal legislation to acquire authority to enter 99-year lease terms is an unwieldy, lengthy, and expensive proposition. As laid out below, the HEARTH bill provides an optional and, we believe, an expedited way for tribes to assume greater control over their lands and encourage tribal economic development.

TULALIP TRIBES

For instance, the Tulalip Tribes of Washington State can lease trust lands, for most purposes described in the 1955 Act without securing the approval of the Secretary. Leases can be for up to 15 years if there is no option to renew; for up to 30 years if there is no option to renew and the lease is issued pursuant to tribal regulations approved by the Secretary; and for up to 75 years including any period of renewal if the lease is issued pursuant to tribal regulations approved by the Secretary. In 1981, the Secretary approved the Tulalip Tribes’ regulations.

NAVAJO NATION

In 2000, the Navajo Nation in Arizona sought greater authority under the 1955 Act and Congress responded by enacting the *Navajo Nation Trust Land Leasing Act* (25 U.S.C. §415(e)). Under this law, the Navajo Nation can enter into lease agreements and renewals of leases of trust lands without the requirement that the Secretary review and approve such leases. The Navajo Nation was required to develop regulations governing leases including an environmental review process, before it could institute its own land leasing regime. In July 2006, the Secretary approved the Navajo Nation’s leasing regulations.

Under the 2000 law, the Secretary maintains authority to take appropriate actions, including cancellation of the lease, in furtherance of the Federal trust obligation. The United States, however, is not liable for losses sustained by any party to a lease (including the Navajo Nation) entered into under the Navajo Nation’s regulations. Interested parties may, after exhausting tribal remedies, submit a petition to the Secretary to

review the compliance of the Navajo Nation with the regulations approved by the Secretary. The Secretary may take actions deemed necessary to remedy the violation complained of, including rescinding the tribal regulations and re-assuming responsibility for approving leases for Navajo Nation trust lands.

INDIAN HOME LOAN GUARANTEE PROGRAM

An efficient and effective Indian land leasing framework is essential to housing delivery and development, but also to Federal loan guarantee programs. I want to touch on one program – the Indian Home Loan Guarantee Program -- also known as the Section 184 Program. The Section 184 loan is a mortgage product, specifically geared for the unique circumstances of Native communities, to facilitate homeownership in Indian lands and within an approved Indian area.

In order to address the lack of private mortgage lending in Native communities, Congress established the Section 184 Program to offer mortgage financing to eligible Native American individuals, families, tribes and TDHEs. Notably, the default rate for the Section 184 Program remains at less than 1 percent.

The Section 184 Program involves the issuance of a Federal guarantee by HUD on loans made by private lenders. Because tribal trust lands may not be foreclosed on in the case of a default, the Section 184 Program requires that the borrower have a valid leasehold in place and demonstrate as much on the application. The borrower and the Indian tribe would negotiate a lease agreement covering the relevant land and the lease would be subject to the approval of the Secretary. In the event of a default, the structure and leasehold interest (and not the underlying land) are subject to foreclosure. The requirement of Secretarial approval in this instance, as in the others described above, can be time-consuming and contribute to low homeownership rates in Native communities.

HEARTH ACT

Under current law, Indian tribes (except the Tulalip Tribes and the Navajo Nation) are presented with two options: they may choose to operate under the strictures of the 1955 Act, complete with the requirement of Secretarial approval or, alternatively, they may secure 99-year lease authority through the enactment of tribe-specific Federal legislation.

In May 2009, Congressman Heinrich introduced the HEARTH Act, which will offer willing Indian tribes the authority to enact their own tribal leasing regulations and to negotiate and enter into certain leases without review or approval of the Secretary. The HEARTH Act would also require 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 operating the Indian Land Title and Records Office (“LTRO”) functions from the BIA. Before Indian lands may be encumbered with a home mortgage, the BIA must prepare and issue a Title Status Report (“TSR”) to HUD. In 1999 and again in 2005, the BIA issued aspirational guidance to its Regional Offices that this process should not, to the extent possible, exceed 30 days. Despite BIA aspirations that

the TSR issuance should take no more than 30 days, Congress in 2005 determined that a more realistic timeline for TSR issuance is 6 months to 2 years. This is clearly unacceptable especially when compared to the title status checks for all other Americans that take no longer than 24 to 48 hours.

In 2000, Congress enacted legislation to establish the Indian Lands Title Report Commission to make recommendations to the BIA on ways to improve the TSR process. To-date, the Commission has never met due to the failure of the Bush Administration to nominate commissioners.

The study and report mandated by the Heinrich legislation will include a review of how the tribal management of the LTRO functions has fared and determine the challenges these tribes face in managing these functions.

CONCLUSION

The NAHASDA has been a welcome shift in Federal Indian Policy, which Congress continues to evolve with further refinements and amendments. Experience has shown that successful initiatives respect tribal involvement and authority, rather than Federal domination. The ISDEAA and NAHASDA are based on these fundamental principles and confirm what has been made clear through research undertaken by the Harvard Project on American Indian Economic Development: “When tribes make their own decisions about what approaches to take and what resources to develop, they consistently out-perform non-tribal decision-makers.”

On behalf of the NAIHC and its membership, we strongly support H.R. 2523 and urge the Committee to move it swiftly through the legislative process. Your continued support of Native communities is greatly appreciated, and the NAIHC stands ready to work with you and your staff on these and any other issues to improve Indian housing programs and living conditions for America’s first people.