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Hearing on Reauthorization of NAHASDA

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Good afternoon, Chairwoman Waters and distinguished members of the Financial Services Subcommittee on Housing and Community Opportunity. My name is Sami Jo Difuntorum, and I am the Executive Director of the Karuk Tribe Housing Authority (KTHA) and have been at KTHA since 1994. I am honored to testify at today's hearing in support of the reauthorization of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and in support of the proposed amendments to the bill to make it even stronger.

On behalf of the Karuk Tribe of California and the Karuk Tribe Housing Authority, I would like to thank the Chairwoman and the members of the Subcommittee for holding this hearing and establishing the reauthorization of the NAHASDA as a priority legislative item for the 110<sup>th</sup> Congress. In particular, we would like to thank the Chairwoman for her efforts to provide resources to meet the severe needs for housing assistance in Indian country and other rural areas. The housing needs for the Karuk Tribe, and across Indian country, are extreme. The NAHASDA has provided KTHA with tools to make notable progress in meeting the housing needs of our Tribe, but there is still a significant unmet need that is far too large. Reauthorization of the NAHASDA provides a necessary opportunity to strengthen the Act by increasing its flexibility and efficiency, but reauthorization is not enough: NAHASDA must also be funded in accordance with the dire housing needs in Indian country.

The Karuk Tribe is made up of several communities, which are located along the Klamath River in two extremely rural portions of Siskiyou and Humboldt Counties located in northwestern California. The Tribe has approximately 3600 enrolled tribal members and the Tribe's current reservation is approximately 600 acres, located on noncontiguous parcels within the three communities. The Karuk Tribe Housing Authority serves one of the most remote and poverty stricken areas of California. Many of our members live in remote, rural regions where economic opportunity and jobs are very limited and unemployment is as extraordinarily high as the per capita income is low. This region was estimated to be 85% timber-dependent, and its economy has not recovered from the closures of local mills, a condition borne out of the fact that, in 2006, 90% of the students enrolled in the local elementary school qualified for the free lunch program. The census data for the Tribe's Happy Camp community, which is where the Tribe's administrative offices and the KTHA office are located, indicate that the median income of \$23,095 is less than half the median income for the state and the per capita income only \$13,614. The census data indicate that the unemployment rate for the Tribe is 83%, and the BIA labor force data indicate that unemployment is at 89%. Not surprisingly, the KTHA waiting list for homes has over 350 families and individuals, many of whom have no other viable housing options.

### **The Karuk Tribe Housing Authority – Innovations and Unmet Needs**

Since the passage of NAHASDA, the KTHA has developed a broad range of housing services, using the flexibility in the Act to meet the needs of our service population in the most efficient manner possible. We have developed several programs

to utilize the tools in NAHASDA intended to facilitate homeownership. For example, we have established a tribal direct loan program using about 15% of our Indian Housing Block Grant (IHBG), managed by our loan officer with over 25 years experience in the private market. With this program we are able to fund four to five low interest loans each year for eligible Indian participants seeking to purchase a home off reservation. We have also established a down payment assistance program to eligible Indian recipients with loans or mortgages to improve existing homes or purchase or construct their own new off reservation homes. Both of these programs are designed to assist low income members, but even with these benefits, only a small fraction of the families on our waiting list are financially capable of participating in these programs.

Additionally, the KTHA has implemented rental voucher programs to service the unique needs of college students and elders living off reservation. With these programs, we are able to provide rental assistance to between 28 and 36 students and 26 elders each year. While these programs help address real housing needs, they are also targeted and do not assist the majority of those families on the waiting list.

The vast majority of those on our waiting list (approximately 85 %) do not have the means to participate in homeownership programs, and they are not students or elders. They are families and individuals seeking on-reservation low income rental units. However, we have only 187 low income housing units located on tribal land, of which 40 are set aside to serve the needs of low income elders and rents for elders are capped at \$125/month. Unfortunately, at the current level of NAHASDA funds available to the KTHA, we do not have the resources to build new low income rental units. The lack of resources is compounded by a lack of infrastructure, such as water, sewer, and, in some communities, electricity, and our remote location, which increases the cost for labor and materials. These environmental circumstances increase the cost of new construction significantly. Therefore, our new construction is limited to the replacement of one or two homes for families and individuals living in substandard housing, who are living in extreme poverty (i.e., an annual income below 30% of the poverty level).

The Assistant Secretary for Public and Indian Housing spoke recently at a conference of Indian housing professionals. He urged tribes and Indian housing authorities to leverage the IHBG funds available with other tools and innovations, and confirmed the Administration's position that the NAHASDA appropriations provide sufficient funds. With all due respect to Assistant Secretary Cabrera, the Karuk Tribe has used those tools and has leveraged funds. Even with those efforts, the funding is simply not sufficient to meet the dire needs our people face.

Unless our Indian Housing Block Grant is increased, a low income family at the end of our housing waiting list will have to wait decades for a home unless their circumstances worsen to the point where their application will be prioritized over others. In an economically depressed region where jobs and housing opportunities are limited, the family will be forced to live these many years in overcrowded conditions on the reservation or relocate to urban centers far away from their homeland, their families, their

culture, and their Tribe. Neither option is acceptable to the housing authority or the Tribe, and we believe that they are not acceptable to Congress.

### **Unmet Housing Needs in Indian Country**

The circumstances facing the KTHA are not unusual in Indian Country. In 2003, the U.S. Commission on Civil Rights issued the report entitled “A Quiet Crisis in Indian Country,” which included a stark assessment of the unmet housing needs in Indian Country. The statistics cited in the report illustrate the dire needs of Native Americans nationwide. We cite the following examples that reflect the issues we face at KTHA:

- Approximately 90,000 Indian families are homeless or under housed.
- 30 % of reservation households are overcrowded, which is six times the national rate.
- 18 % of reservation households are severely over crowded, which lead to a variety of other social ills such as domestic abuse, substance abuse, an increase in school dropout rates.
- Approximately 40 % of on-reservation housing is considered inadequate as compared to 6 % nationwide.
- A lack of community infrastructure (water and sewer systems, electricity, and telephone service).

The Civil Rights Commission also noted that unmet housing needs in Indian Country are compounded by a number of factors such as depressed reservation economies; extreme poverty; lack of infrastructure to support housing communities; geographic isolation; environmental conditions on reservations; poor access to credit; and a lack of funding. Additionally, tribes and Indian housing authorities also face a myriad of overlapping and often duplicative administrative requirements, that require tribes to coordinate federal, local, and sometimes state requirements with tribal requirements, which is both time and resource intensive.

In NAHASDA, Congress expressly recognized the acute housing needs in Indian Country and in Indian communities, and Congress recognized that the provision of affordable houses in safe and health environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socio-economic status. However, as the report of the Civil Rights Commission details, the purchasing power of the IHBG decreased during the years assessed (1998 to 2003). The report also contrasts the loss of IHBG purchasing power to the overall HUD budget, which increased during this period. The report notes that, when adjusted for inflation, the overall HUD discretionary budget increased by 39.6 %, while the funding for HUD’s Native American programs decreased by 1.3 %. Since the report was issued the funding for IHBG has remained flat or decreased at the same time construction costs have spiked, further eroding the purchasing power of tribes and Indian housing authorities.

In 2000, HUD estimated that the NAHASDA funding at that time would only meet 5% of the need for Indian housing and that more than 230,000 housing units would still be needed. The Civil Rights Commission also cites an estimate by the Coalition for Indian Housing and Development that \$1.1 billion would be needed to adequately fund NAHASDA. In testimony provided this year to the Senate Committee on Indian Affairs, the Native American Indian Housing Council (NAIHC) stated that the funding request for 2007 was only \$627 million but that \$748 million would be needed just to keep up with inflation. At these funding levels, even with additional flexibility and efficiencies, tribes and Indian housing authorities will not be able to even maintain the status quo, never mind addressing the unmet need. The 350 families on the KTHA waiting list are a symptom of this systematic underfunding.

### **Draft NAHASDA Reauthorization Bill**

First, let me emphasize that reauthorization of NAHASDA is a priority. As Congress has recognized repeatedly, Indian programs work best when Indian tribes have the authority to plan, implement, and administer federal programs and are freed from federal micromanagement. NAHASDA was enacted in 1996 to begin to implement the longstanding federal policy of tribal self-determination in the housing arena, and it is critical to continue that process.

Despite the great progress that NAHASDA represents toward the goal of self-determination, amendments to NAHASDA are needed to increase flexibility and efficiency in ways that will enable tribes and Indian housing authorities to stretch our underfunded block grants. We need the flexibility to identify and target our local needs, and we need to be free of micromanagement and overlapping and duplicative oversight requirements. For example, HUD requires that we demonstrate compliance with the competitive bid requirements for every purchase, no matter how small (e.g. cleaning supplies, pens, and office paper). The KTHA must fund one entire full time position (procurement clerk) to comply with this excessive application of competitive bid requirements for each of our three offices. This has a very real impact on our budget and diverts our limited funds from housing to unnecessary paperwork.

The most recent discussion draft of the NAHASDA reauthorization bill includes many amendments which we support as a means to provide greater flexibility and to promote tribal self-governance and self-sufficiency. We do not oppose any of the proposed amendments, and we highlight several of the amendments we believe will have the greatest positive effect. We also offer suggested amendments to a few of the current proposals, which we believe will increase their effectiveness. Finally, we note that the discussion draft does not address certain issues which are very important to tribes and Indian housing authorities. While the proposed amendments may appear, at first sight, to merely be a laundry list of particulars, when you step back and look at the big picture, these amendments are integrated pieces of the larger goal inherent in NAHASDA – furtherance of tribal self-determination in meeting the housing needs of its members. I will address several of the proposed amendments to illustrate this point.

## **Important Proposals Included in the Discussion Draft**

### **1. Self-Determined Model Activities For the Low Income Housing Community Program (Subtitle B of Title II).**

This is a new program set out in the discussion draft developed by House staff, and is a proposal that we support. The new Subtitle B is intended to give effect to the Act's recognition of self-governance, providing the degree of self-governance in line with that which many tribes (including the Karuk Tribe) have exercised under the Indian Self Determination and Education Assistance Act (ISDEAA) (which applies to health, social services, and other governmental programs). We believe that, if provided the appropriate flexibility, tribes will be able to do with the Subtitle B demonstration program what we have been able to do with the Self-Governance programs under ISDEAA. However, we are concerned that the program will be unnecessarily held back by two limitations. First, the types of activities that can be included in the demonstration program are overly restricted and the most recent discussion draft includes additional restrictions. In particular, the express authorization for community development activities, such as child care centers and community development buildings, has been stripped from the new draft. Additionally, the list of prohibited activities has been expanded to include infrastructure development, commercial and economic development, and operating costs. These new restrictions undermine the flexibility that is the trademark of this Subtitle. As noted above, the Civil Rights Commission has identified the lack of infrastructure as a primary obstacle for Indian Country housing. Tribes must be able to address the infrastructure needs associated with tribal housing if we are to have efficient and stable housing communities. Homes without a safe and adequate source of water or disposal are unusable. Whereas, with additionally flexibility, tribes may be able to partner with local governments, states, or private developers to provide much needed infrastructure to our low income housing units and the community facilities supporting those units. We respectfully urge the Committee to restore the flexibility initially included in the program. Second, we appreciate that the new draft increases the cap on the amount of funds that may be used from 10 % to 15 %. However, while we understand that the Subcommittee may not be prepared to allow tribes to shift all our funds into this program, we strongly urge that you increase the maximum amount to enable tribes to conduct meaningful projects and programs through this program.

### **2. Tribal Preference in Employment and Contracting (Section 101(k))**

This provision will allow tribes to provide a tribal employment or contract preference adopted by a tribe which shall govern with respect to the administration of the IHBG grant. This amendment tracks the authority provided in the ISDEAA and is consistent with the status of Indian tribes as political entities. It provides tribes with a critical means of employing, training, and developing the skills of the people to be served by these programs, to hopefully lift them out of the poverty that renders them so reliant

on such programs. A program that is especially important to the Karuk Tribe, where unemployment rates exceed 80%. These preferences are based upon the political classification of employees and contractors and tribes should have an authority similar to that which tribes have under the Self-Determination and Self-Governance programs administered by the DOI and HHS.

3. Use of Grant Funds Over Extended Periods (Section 203(f)).

Currently under the NAHASDA tribes and Indian housing authorities must track their grant funds on a year-by-year basis, resulting in a substantial and unnecessary administrative burden. The proposed amendment permits tribes to meet their obligations under the NAHASDA in a more flexible manner, removing a significant burden from tribes as well as reducing the opportunity for HUD to micromanage.

4. De Minimis Procurement Exception (Section 203(g)).

This provision will exempt purchases of less than \$5,000 from the competitive procurement requirements of the Act. Tribes and Indian housing authorities make many de minimis purchases and the application of competitive purchasing requirements to these purchases often costs as much or more than the purchase itself. This is a sensible and much needed amendment that will avoid unnecessary waste and better serve the goals of the competitive purchasing requirements.

5. Training and Technical Assistance Funding (Section 703).

The proposed bill reauthorizes the funding of a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities through 2012. We strongly support retaining this longstanding provision of the Act. This provision provides Congressional appropriators with the authority to fund the efforts of the Native American Indian Housing Council to provide much needed training and technical assistance to tribes and Indian Housing Authorities across the country. It is in the interest of all that tribes and Indian housing authorities have the technical capacity to administer their housing programs in accordance with all applicable federal requirements effectively and efficiently. The NAIHC is the only affordable and targeted provider of such services and without its continued funding we may lose the ability to secure program appropriate training on issues such as maintenance, occupancy, and financial management. That funding has been cut-off for the current fiscal year, since it was inappropriately seen as an “earmark” rather than as a statutorily authorized appropriation. We urge that NAIHC’s funding under the Act be restored.

5. HOME Investment Partnership Act

The proposed amendments to Section 509 remedy a problem that has faced a number of tribes since the enactment of the NAHASDA – the ability to provide homeownership assistance to tribal members under the HOME Investment Partnership

Act. Funds appropriated under that Act are administered by the states, and a number of states have denied tribal access to such funds since NAHASDA, even though states receive funding under the Act based on their entire population, including Indian people. The proposed amendment clarifies that tribes shall still have access to this critical tool for leveraging NAHASDA funding.

### **Important Self-Determination Proposals Not Included in the Discussion Draft**

There is a number of important self-determination proposals that have been proposed by Indian country which are not included in the discussion draft. We hope that you will consider these as you finalize the draft into a bill. These proposals include:

-Allowing tribes to rely on tribal law and policy for the protection of disabled persons in tribal housing. Currently, every tribe is required by HUD to comply with HUD's one-size-fits-all regulations for disabled persons access pursuant to Section 504 of the Rehabilitation Act, even where there are tribal laws in place that address the same concerns in a more specific, local, and culturally appropriate manner. The proposal to amend Section 203 of NAHASDA would permit those tribes who have their own laws to apply such laws in lieu of the HUD regulations, in the same manner that tribes already have the authority to pre-empt application of HUD and Department of Labor prevailing wage rates when they have developed their own rates.

-Authorizing Tribal Designated Housing Entities, where delegated by their tribes, to exercise environmental review authority. NAHASDA already permits tribes to exercise environmental review authority over housing projects, but does not permit tribes to delegate such authority to the tribal agency or agencies that deal with these issues on a day-to-day basis, requiring an unnecessary layering of internal tribal bureaucracy. The proposed amendment to Section 105 would allow tribes to delegate such authority where they choose to do so. The proposal would also eliminate certain redundancies in paperwork currently required under HUD's interpretation of the environmental review requirements.

-Reducing HUD Micromanagement. Indian country has proposed a number of amendments to Title IV of the Act which would streamline the often burdensome, intrusive, and redundant oversight exercised by HUD over tribal programs. The proposed amendments are consistent with the framework set out in the Indian Self-Determination Act, particularly its "self-governance" provisions, which recognize and protect each tribe's ability to carry out such programs in a manner that the tribe determines best benefits its service population.

- Self-governance tribes should have the ability to rely on their tribe's procurement procedures. The NAIHC, as well as the tribes from California and Nevada, support a technical amendment to Section 202(a) of NAHASDA that would require HUD to treat the TDHEs of self-governance tribes as a self-governance tribal organization, thus permitting the TDHE to rely on the tribally adopted and certified procurement (and other administrative) procedures. Self-governance tribes have chartered agencies, such as



tribal public utilities and non-profit corporations, that carry out the programs administered by the DOI and HHS, and these chartered tribal entities have been treated as tribes for the purposes of the Indian Self-Determination Act. Notwithstanding this precedent to the contrary, HUD has interpreted “tribal organization” to exclude TDHEs. This inappropriately constricted interpretation has put the TDHEs of self-governance tribes in the untenable position of not being able to operate under their own tribe’s procurement policies. It has lead, for example, to the bizarre situation faced by one of our neighbor tribes in California, where the TDHE is unable to do business with its own tribe’s corporation that manufactures modular homes for use in Indian country.

### **Resolving Disputes over Use of Data Sources in the Allocation Formula**

There is one final, but critically important issue. The NAHASDA required HUD to develop a funding formula in order to determine the appropriate distribution of the IHBG. The formula developed by HUD has two components, existing housing units and need. HUD regulations provide that the data sources for the need variables “shall be data available that is collected in a uniform manner that can be confirmed and verified for all American Indian and Alaskan Native households and persons living in an identified area. Initially, the data used are US Decennial Census data.” *See* 24 CFR § 1000.330. The HUD regulation appears to respect the authority of each tribe to identify a data set that is most appropriate for the demographic circumstances of the tribe. However, HUD has more recently interpreted this regulation to require that tribes use one certain type of census data set, and unilaterally imposed the use of that data set on all tribes. Congress in the past has included a mandate in the appropriations bill requiring that HUD run the numbers using both data sets, and then allocated to each tribe the high number for that tribe. This mandate is referred to as the “hold harmless” provision.

Springboarding from that Congressional language, a number of tribes and tribal entities have proposed a Compromise Solution intended to put an end to the fight over what figures HUD should use. The Compromise Solution basically removes the decision from HUD and leaves it with the tribal governments. The Compromise Solution does not in any way propose to change the formula, nor does it mandate the use of a particular data set. The Compromise Solution respects each tribe’s right to choose which data set to use when calculating its own allocation. The difference between the Compromise Solution and the current Congressional mandate is that NAHASDA would be officially amended to include language that clarifies, in the Act, that 1) the decision regarding the appropriate data set will be made by the tribe, and 2) that data sets other than those of the Census Bureau may be used, both of which are consistent with a plain reading of the regulations.

The result of the failure to consult with tribes on this critical issue has created a circumstance in which some tribes are winners and some are losers, a situation that has resulted in tremendous amount of controversy and tribes and Indian housing authorities have expended precious time and resources in trying to resolve this issue. Tribal leaders of the Karuk Tribe and many other tribes are now requesting that Congress help put this issue to rest. Rather than dictating which type of data set a tribe must use, we respectfully urge the Subcommittee to seriously consider the Compromise Solution.