

**STATEMENT OF
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**BEFORE THE
Senate Committee on Indian Affairs**

**HEARING
Lending Opportunities: Opening the Door to Homeownership in Indian Country**

October 16, 2019

Good afternoon, Mr. Chairman and members of the Committee. My name is Nate Mount. I am the River Assiniboine representative on the Fort Belknap Indian Community Council. I am pleased to be here today speaking for our Gros Ventre and Assiniboine Tribe, our Aaniiih and Nakoda people. I want to tell you about the home ownership challenges we face on our vast rural north central Montana reservation, as well as about some of things the Fort Belknap Indian Community has been doing to try to solve these challenges for ourselves.

First, I am going to provide some context. I was born and raised on our Reservation.

My father, Harlan Mount, our Tribal Housing Director, is here with me today. My father served as President of our Tribal Council and has previously come here to Washington to testify in that capacity. I grew up watching him serve our people and am honored to be here with him today, to try to continue to do the same.

Interestingly it was almost exactly 75 years ago that several of our tribal leaders testified in a hearing to a Special Investigating Committee for the House Committee on Indian Affairs, about many of the same issues we are still testifying to today and Congress has still not fully addressed.

The Ft Belknap Indian Reservation & Our Housing Crisis

Historically, our Reservation has suffered from high unemployment. Indeed, until recently, our Reservation unemployment rate hovered at 70%, and about 85% on the southern end of our Reservation. Fort Belknap also has little, if any, natural resources to develop such as oil and gas or timber. The Fort Belknap Reservation is very remote and economic development is difficult. We are not near a major population center that would support a significant gaming enterprise. We are 200 miles from the nearest airport.

We do have some modest agricultural and ranching enterprises, such as our buffalo herds, but our geographic isolation and distance from any significant shipping opportunity (such as air or rail) makes any production activities more than challenging. For years, aside from the small number of Tribal and federal jobs available working in government services, our people have relied on seasonal firefighting work or day-laborer wages at area ranches. We have many members who still practice subsistence lifestyles. The median income is less than \$12,000 per year according to recent statistics.

The Fort Belknap Indian Community has more than 8,000 enrolled members, a little less than half of whom live on or near the Fort Belknap Reservation. For those of us who live on-Reservation, we typically live in multi-generational housing, with two and three generations living in two- or three-bedroom homes. It is common to have 13-18 people resident in a single home. This means our children often sleep on floors, in places they should not be. Our housing list is presently more than 150 families-long. According to our tribal housing director, the average wait-time on our housing waitlist is 3.4 years. For two-bedroom units, the wait is over four years. The housing units we do have are generally dilapidated. There has been little to no new housing construction for twenty-five years. There is no private housing market at Fort Belknap. The Fort Belknap BIA agency processes only a single-digit number of residential leases each year and even when a lease is issued, a home may not be built there for a wide variety of reasons such as lack of infrastructure, access, surveys, certified title and simultaneously given the near-total lack of any private conventional mortgage options available on-Reservation, despite the ostensible carrot of the HUD Section 184 loan guaranty program. Simply put, we have nowhere to live.

I myself am an example of the hopelessness our people feel regarding housing. When I returned to the Reservation following law school, I added my name to the housing waitlist. But after years of no movement, and my knowledge that our Tribes had already exceeded the ten-percent threshold of housing participants who can be at 80-100% of median income, I abandoned my effort and took my name off our housing list.

History of the Federally-Funded Housing Failures

How did we get to this crisis point? We have long suffered from inattention. In 1970, a handful of low-rent units were built, followed by a few additional units per year until 1995. The housing units that were built in that timeframe suffer from poor insulation and other structural deficiencies and have been susceptible to significant mold problems. The last homes built with HUD funding were completed 25 years ago, in June 1994.

Past Failures with Using Tax Credits to Build Housing

In 2000, Fort Belknap Housing Authority was dissolved and the Fort Belknap Indian Community Council became the Board of Directors. Since then, the Council has become directly responsible for housing.

Since then, we have had three tax credit home projects. These included relocating about a dozen modular airbase homes from North Dakota. These homes were attended by structural, financial and political issues and sadly haven't ever been habitable.

In the early 2000s, Housing had a down payment assistance program where eligible home buyers applied for and could receive \$25,000. There were a number of Tribal members selling their homes, and the buyers utilized this. In 2004, the assistance was used to purchase homes off of our Reservation.

In 2005, the council applied for and was approved for a tax credit project to rehab 49 Housing units. The rehab started in March of 2006. But our Community struggled to understand the federal tax credit laws, resulting in a number of renters being ineligible, causing a few homeless members.

In 2006, the Council took action to apply for approximately 25 tax credit modular homes. The builder-contractor was a company from New Mexico, while the units were built somewhere around Denver. This project had a number of structural concerns that had to be corrected right after delivery and setup. This caused a number of penalties that included the developer's fee of well over a million dollars, plus additional penalties.

Unsuccessful BIA Residential Leasing Program

Options through the BIA are little better. At the Agency level, when the local BIA employees receive a residential leasing application package, they work through a checklist of items including verifying a correct tribal resolution, legal description, survey (if applicable), encumbrances and/or leases, contact with any existing lessor that has a land contract / lease for relinquishment of a particular site on trust land for residential purposes, and other items in the nine-page local BIA checklist.

At Fort Belknap, the BIA processes only a single-digit number of residential leases per year. Even when they obtain BIA residential leases, many Tribal members abandon efforts to place a home on that land due to their inability to secure financing.

It can easily take two years for a mortgage leasehold to be completed and finalized, from initial request to the tribal council and through the entire process with a final recording at the BIA Land, Titles and Records Office ("LTRO"). The size of land, number of encumbrances (such as rights of way and service agreements), multiple uses of land (such as part of a range unit, agricultural lease, etc.), and other issues increase the review time to certify a particular tract of trust land is available for residential leasing purposes. This unreasonably long time causes many Tribal members (and their mortgage lenders) to abandon the process of seeking a mortgage leasehold and a Section 184 mortgage guaranty.

Despite these desperate attempts by our Tribal Council to bring housing solutions to our people, we have been unable to do so, yet. We lack the most basic dignity of home ownership and safe, secure shelter for our families.

The Improving Ft. Belknap Economy – Island Mountain Development Group

But in the last ten years, our Tribal economic arm, Island Mountain Development Group, has brought an incredible ray of hope to our Community, creating, managing and operating e-commerce businesses, realty and agriculture opportunities, a technology company, a construction company and is now moving into government contracting. Island Mountain now has more than 200 employees, nearly all of whom are Tribal members and most of whom work in our state-of-the-art customer contact center on the southern end of our Reservation. Our Tribal citizens have grown up in largely subsistence households, meaning they hunted or grew their own food. Until two years ago, the only store on our entire Reservation was a gas station convenience store, with no fresh food. The closest significant grocery store was 80 miles away. Many tribal members do not have vehicles. There is very limited public transportation (one bus per day going to the nearest grocery store). The Tribal government is the largest employer, followed by the federal government, and those jobs are 30 miles away from the poorest end of the Reservation, where Island Mountain now operates.

Island Mountain has reduced the unemployment rate on our Reservation by more than 50%, created a steady stream of governmental revenue the Council has been able to use an emergency back-stop for government programs—such as summer service and funding our anti-meth initiative. Additionally, is Island Mountain’s support in standing up a new Tribal store and healthy food cooperative with a orchard, greenhouses, and a professional kitchen where Tribal members can preserve foods they grow or purchase and also learn diabetic cooking techniques.

Emerging Middle Class

For purposes of this hearing, I am sharing this background about Island Mountain because through their innovation, we have an emerging middle class at Fort Belknap. Island Mountain employees have a base salary \$7/hour higher than the average Montana base salary.

The salaries and wages made possible by Island Mountain have made a world of positive difference in the lives of these extended families. Our estimates are that each one Island Mountain job at the call center supports nine Tribal citizens. That means well more than 1,000 people that are not looking to the Tribal and federal governments for assistance—they are self-sufficient. They are financially literate. They understand credit. They have been able to purchase automobiles and clothe and feed their families, as well as assist grandmothers with utility bills and support nieces and nephews and the like.

But **when we survey our Island Mountain employees about what they need to make their lives better, the number one answer is access to housing**, access to home ownership opportunities. While they are a tremendous example of resilience, of what we can achieve for ourselves when we pull ourselves up by our bootstraps, this most basic dignity of having a home eludes them.

New Positive Steps Tribe Is Taking to Create Housing

The Fort Belknap Indian Community Council understands that housing is at the center of community well-being, and is utilizing all available tools to solve our housing crisis for ourselves.

Tribal Residential Leasing Act Under HEARTH Act. On August 5, 2019, our Council enacted the Fort Belknap Indian Community Residential Leasing Act, seeking to take advantage of the 2012 Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act amendments to the Indian Long-Term Leasing Act. As you know, the HEARTH Act provides authority for Indian tribes to lease tribal trust lands directly pursuant to tribal law, without further Secretarial approval. The HEARTH Act is a valuable tool that: (1) empowers tribes to realize their potential for economic growth and job creation on tribal lands, (2) increases community development, and (3) strengthen tribal self-determination.

Our Residential Leasing Act provides our Tribal entities another tool with which to partner effectively and increase efficiencies in residential leasing by removing impediments and delays attendant to the current BIA leasing process. Our Residential Leasing Act would move critical functions from the BIA to the Land Department and other Tribal entities as contemplated in the HEARTH Act.

Our Council chose to narrowly focus on only residential leasing in our HEARTH regulations in order to try to expedite the Department of the Interior’s review and approval. We have also

undertaken significant intra-Tribal implementation efforts in the two months since our passage of our Residential Leasing Act, working with all our Tribal departments—Tribal Land, Environmental, Housing, Planning, THPO, utilities, etc.—and working with the BIA Superintendent, to ensure that we are ready to begin new home construction next spring, when the narrow window of construction that life on the Montana Hi-Line allows, opens. The Residential Leasing Act is a tool that could be used to support expedited private residential development, which Island Mountain is prepared to lead for us.

Purchase of Home Building Business to Subsidize on Reservation Builds. Island Mountain recently acquired one of the premiere custom home-building businesses in Montana and is getting ready to start a 59-lot subdivision construction project in Billings. This will help them create cost and materials efficiencies for on-Reservation housing construction as well. Additionally, we are assessing Community needs to identify the types of housing needed – single, multiple, elder, supportive, etc., and considering infrastructure needs like water, wastewater, roads, broadband, schools and the overall community.

Creation of Own Mortgage Lender. Island Mountain has brought on a conventional mortgage specialist, with 20 years of industry experience, to help stand up Tribal mortgage products that are affordable for Tribal members and positioned to be sold in the secondary mortgage market to the likes of Fannie and Freddie. She is also working to provide education modules for Tribal borrowers and procedures for regulatory enforcement of Tribal mortgages that could benefit both our internal Tribal mortgages and encourage third-party conventional lenders to work with Tribal members in a manner they are presently disinclined to do. In short, we are actively working on all aspects of planning for housing development, save the biggest one—our residential leasing authority—until we have DOI approval.

Still Waiting for DOI Approval Under HEARTH Act. Fort Belknap electronically submitted our Residential Leasing Act to the Department for review on September 10, 2019 and in-person with paper copies to Deputy Director Jim James in Washington, D.C., on September 11, 2019. That meeting was led by my colleague, Fort Belknap Councilman and Lands Committee Chairman Curtis Horn. At that meeting, Councilman Horn was informed the Department’s review would include a first-level review by the Region and a secondary review by the Solicitor’s office, and that the Department thought both levels of review could be accomplished quickly and well within the 120-day timeframe within which the Department must approve or disapprove the Tribe’s submission (per 25 U.S.C. § 415(h)(4)).

Councilman Horn shared at that meeting, and in later meetings with Senators Daines and Tester, the grim picture of the housing crisis at Fort Belknap despite an emerging middle class at Fort Belknap flowing from the Tribes’ economic development efforts and enthusiastic Tribal member interest in home ownership. While we were encouraged by our advocacy efforts here in Washington in September, in the month since, we have seen little progress.

Instead, our Residential Leasing Act has seemingly drifted back and forth within the Department. The Department of the Interior website lists as the HEARTH lead a person who has not worked at the Bureau for nearly three years. **Our counsel has been directed or redirected to at least five different DOI employees in seeking review of our narrowly focused Residential Leasing Act.**

Our submission should be capable of quick review. First, Fort Belknap's submission is narrowly focused on residential leasing. Second, Fort Belknap's draft is modeled on other tribes' residential leasing regulations recently approved by the Department. Third, as we understand Fort Belknap communicated to Mr. James and others, the Tribe is already actively implementing its efforts, including in holding three intra-Tribal and BIA-Fort Belknap all-day working sessions to ensure that they are all ready to begin implementing the Residential Leasing Act in early 2020. Indeed, my co-panelist, Ms. Kunesh, has participated in our implementation sessions and has been a tremendous source of help and support to us as we try to solve our housing crisis. We are grateful to her and her Federal Reserve colleagues.

Additionally, the Fort Belknap has been working on parallel paths with HUD on Section 184 loan guarantee reforms, our own Tribal mortgage code, and securing third-party partners for the delivery of mortgage options for Tribal members.

Quite literally what is holding us up from solving these problems for ourselves is our wait for DOI's permission to allow us to help ourselves.

We are concerned because we understand the Department has a current backlog of 26 sets of HEARTH regulations from tribes around the country and is averaging just two HEARTH approvals per year. We see no reason it should take the Department four months, or longer, to review regulations like ours which are narrowly focused, modeled after recent approvals, and include just six pages of substantive provisions (most of our Residential Leasing Act is definitions).

To our knowledge, we are the first Great Plains/Rocky Mountain tribal government to adopt HEARTH regulations and one of few in rural areas looking to utilize it. We hope that our efforts will provide an example from which other tribes can learn in the future. To get there, we recommend the Department's allocation of additional Solicitor resources to HEARTH reviews, as well as the Department's identification of a "HEARTH Czar," who is a one-stop resource to help tribes navigate the DOI HEARTH-approval process.

In addition to securing our Residential Leasing Act approval to restore our inherent Tribal authority over our own lands and allow us some escape from Federal bureaucratic entanglements, we believe improvements in the accessibility and reliability of BIA land records are essential for us to succeed in establishing a private housing market at Fort Belknap.

Digitization of Land Documents Needed

The Senate Appropriations Committee has recently encouraged the Department's commitment of appropriate Trust-Real Estate resources to assist us in HEARTH implementation:

"The Committee also recognizes increased digitization of Indian land records would increase efficiency within Trust-Real Estate Services. Within the amounts provided, the Committee encourages Trust-Real Estate Services to implement additional digitization of Indian land records to promote Tribal economic development opportunities in Indian Country, including the Fort Belknap Indian Community." Report No. 116-123 to accompany S. 2580 at p. 57.

More accurate and more accessible land records are the lynch-pin to housing financing. Creation and maintenance of a digital system for maps and records (e.g., property interest, encumbrance and leasehold mortgage) is essential for efficiency and third-party lenders. We respectfully request SCIA Oversight of the implementation of this digitization provision.

Tribes Need Access to TAAMS

We would like to get our Reservation land records much closer to what conventional mortgage lenders observe outside reservations. Presently, the BIA is also responsible for all relevant LTRO functions unless tribal employees have been subject of a background check for clearance, have been trained in the Trust Asset and Accounting Management System (“TAAMS”) for federal records on trust lands for access, and are covered by a cooperative agreement between the Tribes and the BIA for various levels of access to the records system. **We do not have access to BIA’s records or the TAAMS systems.**

Our Tribal Land Department spent \$25,000 on mirror software so we could try to recreate for ourselves the information available in the TAAMS system. But because the systems don’t talk to each other, our Tribal Land has only incomplete information. And what they do have is often inaccurate, with land descriptions not matching survey records and the like. But a certified Title Status Report is a requirement for a Section 184 loan guaranty and our Tribal members have been experiencing waits of a year or more to get their TSRs.

Nearly Two-Year Wait for HUD 184 Loan Guaranties

Island Mountain CEO Terry Brockie, a Gros Ventre Tribal member, is a great example of how far afield our reality is from the norm. He is a very credit-worthy person, serving as our CEO and before that having held other professional jobs and having served as county superintendent of schools. As detailed in his written testimony submitted to the Committee, it took him 23 months, nearly two full years, to secure a 184 loan guaranty. Compare that to the standard 3-12-week range for off-reservation commercial mortgages, or frankly the one month average for some lenders. At that rate, Mr. Brockie waited 23 times longer than private, non-HUD 184, homeowners. Quite simply, mortgage lenders cannot hold underwriting open for years waiting for all the Section 184 boxes to be checked.

Recommended Solution: “Priority Deployment Mechanism”

We agree with HUD that it is essential to update the loan guarantee program because it remains the same since it was established in 1992. We also applaud HUD’s efforts to increasing their staffing for 184 loan processing. We understand that they currently process between 3,000 to 4,000 loans per year with only four staff. And keep in mind that, when 184 issues go back to the BIA at Fort Belknap, there is not a single dedicated residential leasing person, and the Fort Belknap Agency is presently short four realty staff. At a minimum, the Federal agencies responsible for administering these programs should be fully staffed.

We also propose additional reforms to the 184 process that we believe would expedite home ownership. We propose to borrow extensively from HEARTH and Opportunity Zone language recently enacted by Congress to add a new subsection allowing tribes to designate priority areas for housing development. Areas so designated would be first in line for records digitization and additional

staffing support. Essentially, this would allow tribes to fast-track mortgage guarantees for housing priority areas on reservations. We propose that tribes make the designations, notify the HUD Secretary, and thereafter the Bureau would have 60 days to get the records in order and 90 days to generate certified TSRs. We also propose to clarify that all mortgage guarantee reviews are categorical exclusions from Federal environmental review so that applicants do not have to do irrelevant things like obtain a certification from the Bureau that their home in north central Montana does not impact a coastal zone (presently an EPA requirement for 184 guaranties). The HUD regulations are a confusing patchwork of cross-references to other regulatory sections and acts, and while we think it is already accurate that mortgage guaranties are categorical exclusions, it would be helpful to applicants to just state that expressly.

Our proposed addition to 12 U.S.C.A. § 1715z-13a would be a new subsection (i)(8):

Priority Deployment Mechanism

There is established in this subsection the Priority Deployment Mechanism for the Indian Housing Loan Guarantee Fund for the purpose of encouraging more rapid delivery of loan guarantees under this Section. The Priority Deployment Mechanism includes three principal components: designation by tribal governments, increased levels of supporting services from the Bureau of Indian Affairs and categorical exclusion from federal environmental reviews.

- A. Designation.** For purposes of this subsection (8), a tract of land in an Indian area may be designated by a tribe as eligible for the Priority Deployment Mechanism if the tribe nominates the tract for designation as qualified for the Priority Deployment Mechanism and notifies the Secretary in writing of such nomination.
- B. Bureau of Indian Affairs Assistance.** Upon designation and notification as set forth in subsection 8(a) herein, the applicable Bureau of Indian Affairs Land Titles and Records Office shall digitize all land records associated with the designated tract within 60 days of notice of the designation. The Bureau of Indian Affairs shall deploy personnel as needed to review land records associated with any tract designated as qualified for the Priority Deployment Mechanism in order to facilitate delivery of certified Title Status Reports to the Department in connection with any loan guarantee application under this Section within 90 days of the date of the borrower's application.
- C. Categorical Exclusion from Additional Environmental Reviews.** Because tribal governments will make designations under subsection 8(A) pursuant to any applicable tribal environmental laws and are making such designations to prioritize land for Indian area housing developments, any tract designated pursuant to subsection 8(a) as qualified for the Priority Deployment Mechanism shall be categorically excluded from any additional federal environmental review requirements, including but not limited to as provided in 24 C.F.R. § 1005.105(e), 24 C.F.R. 1000.20, 24 C.F.R. Part 50, and 24 C.F.R. Part 58 because priority deployment of loan guarantees under this Section do not alter physical conditions in a manner or to an extent that would require review under NEPA or other laws and authorities applicable to other Department actions.

Conclusion

Thank you for listening to our long list of things we believe would help improve access to home ownership for Fort Belknap Tribal members. We are working very hard to push this boulder up the mountain for ourselves. What we really want is for the Federal government to get out of the way—to put these decisions and processes about our lands back in our inherent Tribal authority. We believe this is consistent with self-determination policy and the only way our people will be able to experience the dignity of secure, affordable, dignified housing on our Reservation.