

# Tribal Housing Issues Indian Affairs Committee

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**Hat 1:** CEO, NM Eviction Prevention & Diversion

**Hat 2:** President & Founder,

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### Outline of Code of Federal Regulations

- ▶ Title 24 Housing and Urban Development (Secs. 0.1 to 4100.4)
  - ▶ Subtitle A Office of the Secretary, Department of Housing and Urban Development (Secs. 0.1 to 93.453)
  - ▶ Subtitle B Regulations Relating To Housing and Urban Development (Secs. 100.1 to 4100.4)
    - ▶ Chapter IX Office of Assistant Secretary For Public and Indian Housing, Department of Housing and Urban Development (Secs. 902.1 to 902.999)
      - Part 900-901 Reserved
      - ▶ Part 902 Public Housing Assessment System (Secs. 902.1 to 902.113)
      - ▶ Part 903 Public Housing Agency Plans (Secs. 903.1 to 903.25)
      - ▶ Part 904 Low Rent Housing Homeownership Opportunities (Secs. 904.101 to 904.309)
      - ▶ Part 905 The Public Housing Capital Fund Program (Secs. 905.100 to 905.804)
      - ▶ Part 906 Public Housing Homeownership Programs (Secs. 906.1 to 906.49)
      - ▶ Part 907 Substantial Default By a Public Housing Agency (Secs. 907.1 to 907.7)
      - ▶ Part 908 Electronic Transmission of Required Family Data For Public Housing, Indian Housing, and the Section 8 Rental Certificate (Secs. 908.1 to 908.100)
        - Part 941 Removed
      - ▶ Part 943 Public Housing Agency Consortia and Joint Ventures (Secs. 943.100 to 943.151)
      - ▶ Part 945 Designated Housing-public Housing Designated For Occupancy By Disabled, Elderly, or Disabled and Elderly Families (Secs. 945.100 to 945.100)
      - ▶ Part 960 Admission To, and Occupancy of, Public Housing (Secs. 960.101 to 960.707)
      - ▶ Part 963 Public Housing-contracting With Resident-owned Businesses (Secs. 963.1 to 963.12)
      - ▶ Part 964 Tenant Participation and Tenant Opportunities In Public Housing (Secs. 964.1 to 964.430)
      - ▶ Part 965 Pha-owned or Leased Projects-general Provisions (Secs. 965.101 to 965.805)
      - ▶ Part 966 Public Housing Lease and Grievance Procedure (Secs. 966.1 to 966.57)
        - Part 968 Removed
        - Part 969 Removed

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### Outline of Code of Federal Regulations

- ▶ Part 970 Public Housing Program-demolition or Disposition of Public Housing Projects (Secs. 970.1 to 970.35)
- ▶ Part 971 Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required By Law (Secs. 971.1 to 971.13)
- ▶ Part 972 Conversion of Public Housing To Tenant-based Assistance (Secs. 972.100 to 972.239)
- ▶ Part 982 Section 8 Tenant-based Assistance: Housing Choice Voucher Program (Secs. 982.1 to 982.643)
- ▶ Part 983 Project-based Voucher (Secs. 983.1 to 983.354)
- ▶ Part 984 Section 8 and Public Housing Family Self-sufficiency Program (Secs. 984.101 to 984.401)
- ▶ Part 985 Section 8 Management Assessment Program (Secs. 985.1 to 985.211)
- ▶ Part 990 The Public Housing Operating Fund Program (Secs. 990.100 to 990.325)
- ▶ Part 1000 Native American Housing Activities (Secs. 1000.1 to 1000.558)
  - Part 1001-1002 Reserved
- ▶ Part 1003 Community Development Block Grants For Indian Tribes and Alaska Native Villages (Secs. 1003.1 to 1003.703)
  - Part 1004 Reserved
- ▶ Part 1005 Loan Guarantees For Indian Housing (Secs. 1005.101 to 1005.120)
- ▶ Part 1006 Native Hawaiian Housing Block Grant Program (Secs. 1006.1 to 1006.440)
- ▶ Part 1007 Section 184A Loan Guarantees For Native Hawaiian Housing (Secs. 1007.1 to 1007.80)
  - Part 1008-1699 Reserved
- ▶ Chapter X Office of Assistant Secretary For Housing-federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Disposal Act) (Secs. 2000.1 to 2000.999)
- ▶ Chapter XII Office of Inspector General, Department of Housing and Urban Development (Secs. 2002.1 to 2004.29)
- ▶ Chapter XV Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development (Secs. 2005.1 to 2005.999)
- ▶ Chapter XX Office of Inspector General, Department of Housing and Urban Development (Secs. 3280.1 to 3800.60)
- ▶ Chapter XXIV Board of Directors of the Hope For Homeowners Program (Secs. 4100.1 to 4100.4)
- ▶ Chapter XXV Neighborhood Reinvestment Corporation (Secs. 4100.1 to 4100.4)

▶ Title 25 Indians (Secs. 1.1 to 1200.44)



# New Mexico Eviction Prevention & Diversion

*NMEPD*

In NMEPD's opinion:

1. **The number one affordable housing priority (in Albuquerque) should be a site/complex for unsheltered Native American New Mexicans with quality, culturally appropriate wrap-around services, planned & built with Native American input & participation**
2. **The State of NM must invest in a permanent, specialized team to help tribes & Native Americans access federal funding & push through federal processes as quickly as possible**

# The Need

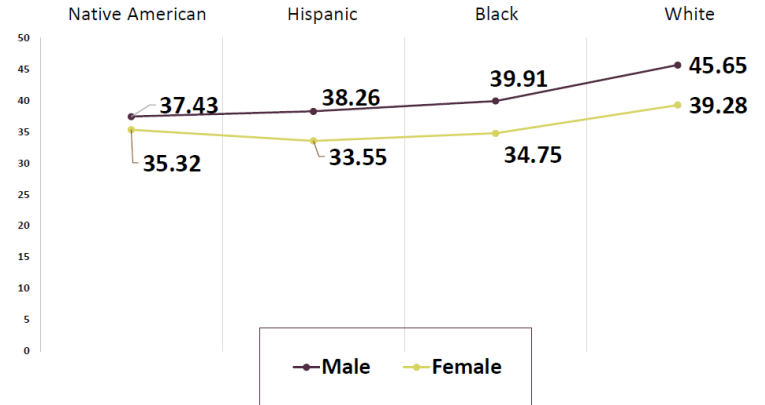
Native Americans suffer the worst socioeconomic ill rates (by race)

NMEPD: Largest racial group to access eviction prevention & rental assistance, behind only Whites

- McKinley County, with NM's largest Native American population, has the state's highest poverty rate (2021)
- Cibola & McKinley Counties have the state's worst per capita personal income (2021)
- Suicide rate of 34.9 per 100K NM residents in 2021, compared to the state rate of 24.3
- Though only 11.2% of NM's population in October 2022, accounted for 15% of HSD program recipients
- In October 2022, San Juan & McKinley Counties each had 1.8% of their Medicaid/SNAP/Cash Assistance recipients experiencing homelessness, behind only Bernalillo County & 2 other counties
- Though only 4.6% of the population w/in the City of Albuquerque, account for 11% of the population served by Albuquerque Healthcare for the Homeless (2020)

## Homeless Mortality in New Mexico

Mean Age at Death by Race and Gender



# NMEPD's Informal System Assessment

- State of NM entities are hesitant to wade into Native American housing matters
  - It's difficult. See HUD regs on slides 1 & 15.
  - With 23 tribes, the federal government, the state government, local governments, trust land, allotted land, & fee simple land, it is akin to checkerboard jurisdiction
  - There is desire to address the issue, but it is set aside at initial planning & implementation with the intent to return to the matter later because of the difficulty. Attention does not return to the matter.
- The tribes have insurmountable capacity & system infrastructure barriers, much larger than that our state & local governments face currently
- The State of NM has reached a consensus about involving itself in housing
  - **THAT MUST INCLUDE A STATE TEAM DEDICATED SOLELY TO ADDRESSING THE GAPS IN THE NATIVE AMERICAN HOUSING CHECKERBOARD**

**What are some  
federally provided  
options?**



# Native American Housing Assistance & Self-Determination Act of 1996 (NAHASDA)

## National Best Practice San Felipe Pueblo

Following 5 slides created by  
Isaac Perez, Executive Director, San Felipe  
Housing Pueblo Housing Authority

## HUD Office of Native American Programs (ONAP)

- Indian Housing Block Grant (IHBG)
- Indian Community Development Block Grant (ICDBG)
- Section 184 Home Loan Guarantee
- Title VI Leverage

# OPPORTUNITIES

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- Tribe donated 100-acre parcel
- \$4M unspent in LOCCS
- 2009 ARRA funding: \$2M for infrastructure
- Design plans in place
- Nearby tribal water/sewer treatment facility. No septic!



# NAHASDA IS A TOOL TO GET MORE \$\$\$

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## TITLE VI

- Allowed us to leverage our limited IHBG
- \$500,000 turns into \$2.5M in loan
- We negotiate a 2-year interest only loan
- \$ are used to construct homes
- We use our IHBG to make interest payments
- Force account crew builds homes
- Families are qualified for loans with HA

## SECTION 184

- We take out 184 loans on the homes after construction – paying ourselves back for our upfront construction costs
- We use the cash out to pay off our Title VI loan
- Once families sign their mortgage documents, they then make payments to the HA
- We use family payments to repay the Section 184 loan



# SOURCES AND USES

## LAND (100 ACRES)

\$9,000,000 TRIBAL (DONATION)

## INFRASTRUCTURE

\$2,000,000 ARRA/NAHBG  
(same as IHBG)

\$800,000 IHBG

\$200,000 IHS

\$300,000 RHED Rural Housing & Economic Development

\$3,100,000 FHWA Federal Highway Administration

## CONSTRUCTION

\$225,000 MFA

\$1,600,000 RIF  
Rural Innovation Fund

\$7,800,000 TITLE VI

\$8,300,000 SECTION 184

\$1,650,000 ICDBG

**TOTAL= \$34,975,000**

# FORCE ACCOUNT CREW

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- 40 tribal members
- Tribally-determined wage rates



# “WE CAN ONLY DO WHAT WE DO BECAUSE THE TRIBE SUPPORTS US”

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- Land Donation – 100 acres
- \$10 million loan to pay off Title VI and previous 184 Loans
  - Rather than pay the bank principle and interest – we pay the tribe
  - Tribe now has a strong investment portfolio
- Worked with DOT to get funds for roads and sidewalks
- Tribe subsidizes two full-time positions and part of ED salary
- Providing Funding for two parks
- Tribe advances a loan on IHBG funds until new fiscal year funds are received

# About Section 184 Loans



## Lenders

- Roughly only 30 lenders in NM (most, if not all, based out-of-state)
- USDA is one
- Lenders don't earn as much interest as on a typical mortgage, so little incentive to do Section 184 loans
- Section 184 loans do not have a minimum credit score requirement, but all lenders do

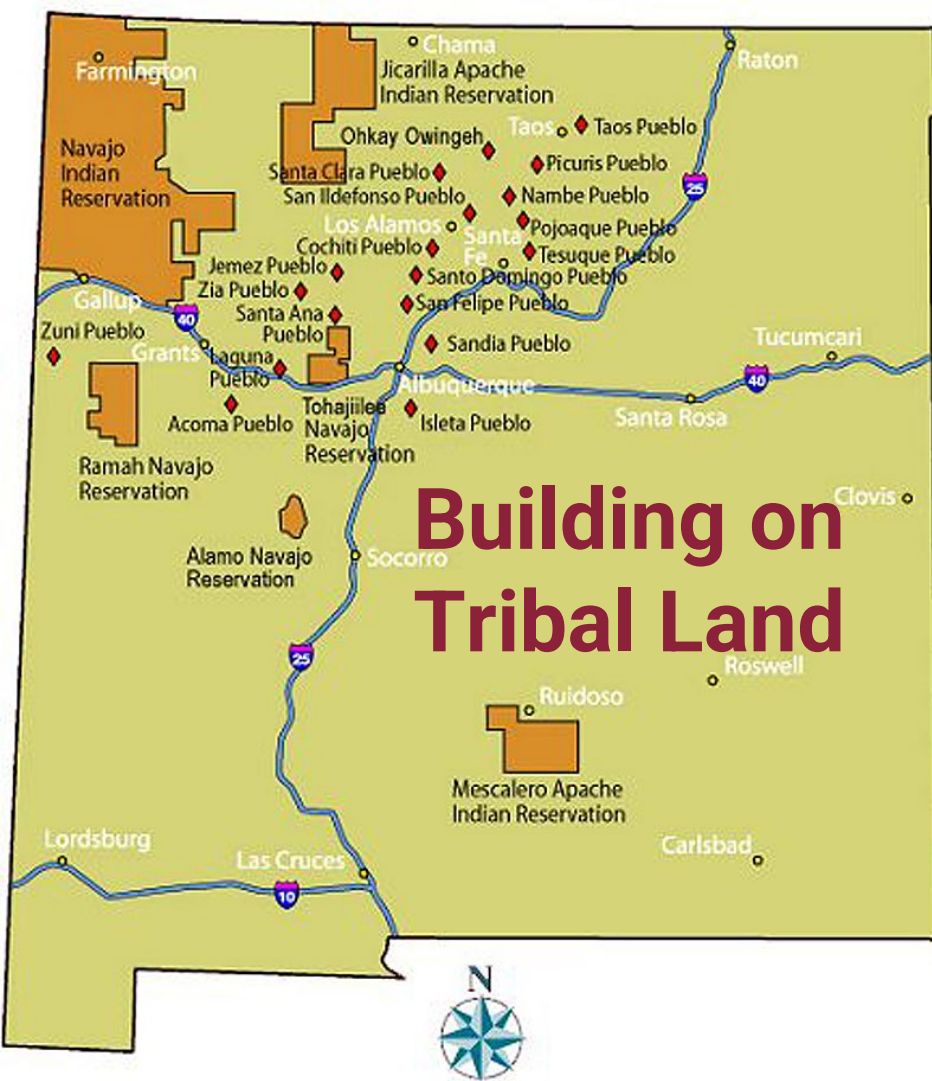
## Mortgage & Mortgagees

- Requires 2.25% down payment
- Less than 1% of MFA administered loans (for HUD) are Section 184
- Limited to residential, single-family housing up to 4 units
- Limited to primary residence
- Foreclosures go to tribe
- Tribes, Indian Housing Authorities, & Tribally Designated Housing Entities (TDHEs) can be mortgagee
- 20 NM tribes are approved for lending for homes on trust land

## Loan Purpose

For fee simple, allotted, or trust land

- Purchase
- Construction
- Rehabilitation
- Refinance



## Allotted Land – Residential Lease

- Requires approval of **ALL** owners
- BIA

## Trust Land – Homesite Lease

- Water line
- Power line
- Historic preservation
- National Environmental Policy Act (NEPA)
  - Biological Compliance (endangered species)
  - Cultural Resource Compliance (archaeologist)
- Survey
- Grazing
- Rights of Way
- Inheritance

## Practically & Practicably Almost Impossible without specialized, sustained, substantial administrative support

### Frequently Asked Question

What is the process of getting a homesite lease? —

Generally, you first pick-up an application and fill it out. Then you contact your Grazing/Land Board Official who will assist you with technical advice. You submit the application, with the required documents; fees, environmental review approvals (Biological and Cultural), with a survey plat. A complete HSL packet will be submitted by your local land office staff for the Environmental Reviewer, and finally to the department manager for review and approval.

How long is the Homesite Lease process? —

About nine (9) months to twenty-four (24) months. Highly dependent on how soon applicant is able to contract an archaeologist and land surveyor and turn in all proper documentation. Factors that increase the length of time include: additional environmental reviews to evaluate Fish and Wildlife concerns; assessment of uranium impact or other human health and safety concerns; consent disputes; other. . .

How much does it cost to get a homesite lease with all the fees, rental payments, and third-party contractors? —

Your vested interest may vary from \$110 - \$2,500.00. There is a \$30 application fee. A \$20 fee for a Biological review with the Fish & Wildlife during the application process. Once the lease is approved, there is a yearly \$1 or \$12 rental fee, depending on the type of lease agreement you have. Fees are subject to change. Other costs incur when hiring a private surveyor [\$ 500- \$1,500] and archaeologist [\$ 350 - \$ 700], but NLD cannot confirm a set price as these are third-party contractors whose agreement of services are between you and them. Costs also vary because some may not be applying for a new homesite, some may be transferring an Approved Homesite Lease, in which case the rental fee must be paid in full, and a \$45 processing fee, along with any incurring costs brought on due to the lack of environmental compliance approvals.

Why does it take so long and why must it go to various places? +

What is a biological and cultural resource clearance? And why do we need it? —

These reviews are required based on federal, state, & tribal regulations applied through the National Environmental Policy Act (NEPA). They are put in place to ensure compliance with laws that protect wildlife, their habitat, land use and historical sites.

# Practically & Practicably Almost Impossible without specialized, sustained, substantial administrative support

ECFR CONTENT

▼ Title 25 Indians

▼ Chapter I Bureau of Indian Affairs, Department of the Interior

▼ Subchapter H Land and Water

▼ Part 162 Leases and Permits

▼ Subpart A General Provisions

▼ Purpose, Definitions, and Scope

- § 162.001 What is the purpose of this part?
- § 162.002 How is this part subdivided?
- § 162.003 What key terms do I need to know?
- § 162.004 To what land does this part apply?

▼ When to Get a Lease

- § 162.005 When do I need a lease to authorize possession?
- § 162.006 To what types of land use agreements does this part apply?
- § 162.007 To what permits does this part apply?
- § 162.008 Does this part apply to lease documents I signed before January 4, 2013?
- § 162.009 Do I need BIA approval of a subleasehold mortgage?

▼ How to Get a Lease

- § 162.010 How do I obtain a lease?
- § 162.011 How does a prospective lessee identify and contact individual Indian landowners to negotiate a lease?
- § 162.012 What are the consent requirements for a lease?
- § 162.013 Who is authorized to consent to a lease?

▼ Lease Administration

- § 162.014 What laws will apply to leases approved under this part?
- § 162.015 May a lease contain a preference consistent with tribal law for tribal members?
- § 162.016 Will BIA comply with tribal laws in making lease decisions?
- § 162.017 What taxes apply to leases approved under this part?
- § 162.018 May tribes administer this part on BIA's behalf?
- § 162.019 May a lease address access to the leased premises for infrastructure?
- § 162.020 May a lease combine tracts with different Indian land ownership?
- § 162.021 What are BIA's responsibilities in approving leases?

- § 162.022 What are BIA's responsibilities in approving leases?
- § 162.023 What if an individual or entity takes an approved lease or other proper action on Indian land without BIA approval?
- § 162.024 May BIA take emergency action if an individual or entity takes an approved lease or other proper action on Indian land without BIA approval?
- § 162.025 May decisions under this part be appealed?
- § 162.026 Who can answer questions about this part?
- § 162.027 What documentation may BIA require for a residential lease before BIA approval of a residential lease?
- § 162.028 How may an Indian tribe obtain information about the NEPA review documentation?
- § 162.029 How does BIA provide notice to the public about the NEPA review documentation?

► Subpart B Agricultural Leases

▼ Subpart C Residential Leases

▼ Residential Leasing General Provisions

- § 162.301 What types of leases does this subpart cover?
- § 162.302 Is there a model residential lease form?
- § 162.303 Who needs a lease for housing?
- § 162.304 How long may the term of a residential lease be?
- § 162.305 What must the lease include if it contains a subleasehold mortgage?
- § 162.306 Are there mandatory provisions that a residential lease must contain?
- § 162.307 May permanent improvements be made on a residential lease?
- § 162.308 How will BIA enforce removal requirements?
- § 162.309 How must a residential lease describe improvements?
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- § 162.317 How must a residential lease describe improvements?

▼ Rental Requirements

- § 162.320 How much rent must be paid under a residential lease?
- § 162.321 How much rent must be paid under a residential lease on Indian land?
- § 162.322 How will BIA determine fair market rental value?
- § 162.323 When are rental payments due?
- § 162.324 Must a residential lease specify what form of payment is acceptable?
- § 162.325 What form of payment is acceptable?
- § 162.326 May a residential lease provide for non-monetary compensation?
- § 162.327 Will BIA notify a lessee when a payment is due?
- § 162.328 Must a residential lease provide for rental review?

▼ Bonding and Insurance

- § 162.329 What other types of payments are required for a residential lease?
- § 162.330 Is a performance bond required for a residential lease?
- § 162.331 Is insurance required for a residential lease?
- §§ 162.336-162.337 [Reserved]

▼ Approval

- § 162.338 What documents are required for BIA approval of a residential lease?
- § 162.339 Will BIA review a proposed residential lease before or during the NEPA review documentation?
- § 162.340 What is the approval process for a residential lease?
- § 162.341 How will BIA decide whether to approve a residential lease?
- § 162.342 When will a residential lease be effective?
- § 162.343 Must a residential lease document be recorded?
- § 162.344 Will BIA require an appeal bond for an appeal of a residential lease document?

▼ Amendments

- § 162.345 May the parties amend a residential lease?
- § 162.346 What are the consent requirements for an amendment of a residential lease?
- § 162.347 What is the approval process for an amendment of a residential lease?
- § 162.348 How will BIA decide whether to approve an amendment of a residential lease?
- § 162.349 May a lessee assign a residential lease?
- § 162.350 What are the consent requirements for an assignment of a residential lease?
- § 162.351 What is the approval process for an assignment of a residential lease?
- § 162.352 How will BIA decide whether to approve an assignment of a residential lease?

▼ Subleases

- § 162.353 May a lessee sublease a residential lease?
- § 162.354 What are the consent requirements for a sublease of a residential lease?
- § 162.355 What is the approval process for a sublease of a residential lease?
- § 162.356 How will BIA decide whether to approve a sublease of a residential lease?
- ▼ Leasehold Mortgages
- § 162.357 May a lessee mortgage a residential lease?
- § 162.358 What are the consent requirements for a leasehold mortgage of a residential lease?
- § 162.359 What is the approval process for a leasehold mortgage of a residential lease?
- § 162.360 How will BIA decide whether to approve a leasehold mortgage of a residential lease?

▼ Effectiveness, Compliance, and Enforcement

- § 162.361 When will an amendment, assignment, or sublease of a residential lease be effective?
- § 162.362 What happens if BIA disapproves an amendment, assignment, or sublease of a residential lease?
- § 162.363 What happens if BIA does not meet a deadline for approval of a residential lease document?
- § 162.364 May BIA investigate compliance with a residential lease?
- § 162.365 May a residential lease provide for non-monetary compensation?
- § 162.366 What will BIA do about a violation of a residential lease?
- § 162.367 What will BIA do if the lessee does not comply with a residential lease on time?
- § 162.368 Will late payment charges or special fees apply under a residential lease?
- § 162.369 How will payment rights relating to a residential lease be enforced?
- § 162.370 When will a cancellation of a residential lease be effective?
- § 162.371 What will BIA do if a lessee remains in possession of a residential lease after it expires or is terminated or cancelled?
- § 162.372 Will BIA appeal bond regulations apply to residential leases?
- § 162.373 When will BIA issue a decision on an appeal of a residential lease?
- § 162.374 What happens if the lessee abandons the residential lease?

► Subpart D Business Leases

► Subpart E Wind and Solar Resource Leases

► Subpart F Special Requirements for Certain Reservations

▼ Subpart G Records

- § 162.701 Who owns the records associated with this part?
- § 162.702 How must records associated with this part be maintained?
- § 162.703 How does the Paperwork Reduction Act apply to this part?