

WRITTEN TESTIMONY OF MAX ZUNI, GOVERNOR OF THE PUEBLO OF ISLETA
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON “LENDING OPPORTUNITIES: OPENING THE DOOR TO
HOMEOWNERSHIP IN INDIAN COUNTRY”
OCTOBER 16, 2019

Dear Honorable Chairman Hoeven and Members of the Committee:

Introduction:

Ma Gu Wam. Greetings. My name is Max Zuni. I am the Governor of the Pueblo of Isleta. The Pueblo of Isleta is one of nineteen (19) Pueblos in New Mexico and one of twenty two (22) tribes in New Mexico. The Tiwa language, the language spoken by the Pueblos of Isleta, Sandia, Taos, and Picuris, is still spoken in the Pueblo and we continue to live according to the centuries old traditions of our ancestors. The livelihood of many Isleta residents continues to be farming, ranching, and sale of arts and crafts and traditional foods.

Isleta Pueblo is surrounded by Albuquerque to the north and the small towns of Bosque Farms and Los Lunas to the south. The Isleta Indian Reservation has a land base of 330 square miles within two counties, Valencia and Bernalillo. Isleta Reservation lands consist primarily of tribal trust lands. Isleta residents live on both the western and eastern banks of the Rio Grande River. The village, located on the western bank of the Rio Grande River, remains the cultural and spiritual center of the Isleta people and continues to be inhabited by a large portion of the Pueblo's members. A large portion of Isleta's residential areas are in flood zones as mapped by the Federal Emergency Management Agency (FEMA). As discussed below, this has created a major challenge in housing and community development.

Demographics of Isleta Pueblo:

According to the 2017 U.S. Census data 3,980 people live in Isleta. Isleta Census data shows our population as 4,200. Using U.S. Census data, 3,738 of Isleta residents (or 93%) are American Indian or Alaska Native (AIAN). Those that aren't AIAN are family members. There are 1,083

households in Isleta.¹ According to U.S. Department of Housing and Urban Development (HUD) 2019 data, there are 579 low income households (more than half of all households) in Isleta Pueblo that need housing. This means that more than half of all households live in overcrowded conditions.

A large factor of overcrowded conditions is the lack of sufficient income for housing. In fact, AIANs living in Isleta Pueblo experience higher unemployment rates, lower income, higher poverty rates, and other disparities compared to the overall U.S. and compared to non-Native residents of New Mexico. Using HUD data², 634 or 51% of Isleta's households are low income, with 21% falling below 30% of the median income. A study conducted in 2012 of New Mexico Native American children report that 28% of Isleta children live below the poverty level.³ In the Pueblo, the individual poverty rate is 25.3%, compared to the individual poverty rate of 19.8% in New Mexico and the 12.3% individual poverty rate of the U.S. in total.⁴

Isleta Pueblo families generate less income than other families in New Mexico and the U.S. According to the 2017 American Community Survey (ACS), the median household income in Isleta is \$32,131, compared to the state median household income of \$45,674 and the U.S. median household income of \$55,322. Forty eight percent (48%) of families in Isleta have a single income earner, while 20% of families have no wage earner.⁵ Residents of Isleta Pueblo experience higher unemployment compared to Native peoples off-reservation, who face disproportionate unemployment themselves. Isleta has an unemployment rate of 8.3%, more than the 6.7% unemployment rate for New Mexico and the 6.6% unemployment rate for the United States.

For the past 16 years, the Pueblo of Isleta has provided annual per capita payments to tribal members of anywhere between \$1,000 and \$2,000. These funds are for the most part immediately spent on disposable items. Per capita payments to minors age 18 and under are disbursed to parents or guardians. Before the creation of Tiwa, there was no financial education available to residents, including the youth of the Pueblo, who could potentially have a savings of \$36,000 in principal by the time they are 18 years of age. While there is no data available, the most likely scenario is that most children's funds are used for disposable goods and little investment of children's funds.

¹ Home Town Locator of the Isleta Pueblo, 2019 Demographic Data.

² HUD FY 2019 IHBG Estimate Allocation.

³ Native American KIDS COUNT 2012 Special Report, Snapshots from the American Community Survey and other Data Sources.

⁴ 2017 ACS data.

⁵ 2017 ACS data.

While there are employment opportunities in the Pueblo, young families with small children are unable to join the workforce for lack of sufficient child care. Isleta's largest employers are the Isleta Pueblo government and the Casino and Resort which manages the casino and resort, the Lakes and RV Park, two gas stations, the Golf Course and the Family Fun Center. Even with these employment opportunities, many of these jobs pay at starting or close to starting wages. Consequently, many families live paycheck to paycheck, spending a large part of their income on rent, propane, vehicle payments, vehicle maintenance, gasoline, groceries and disposable goods.

The Creation of Tiwa Lending Services, Inc. (Tiwa):

To address the above and to take the driver's seat to spur economic development, Tiwa was created by the joint efforts of the Pueblo of Isleta, the Isleta Pueblo Housing Authority (IPHA) and the Community Development Financial Institutions (CDFI) Fund of the U.S. Department of the Treasury. Tiwa's mission statement has always been to encourage community development and improve the social and economic conditions of Isleta Pueblo residents and Native Americans in surrounding communities.

The effort began in 2009 when the Pueblo and IPHA sent representative to a Native CDFI training funded by the CDFI Fund. It was through this training, technical assistance provided by Oweesta, another Native CDFI, and technical assistance funds from the CDFI Fund, that Tiwa was created.

Tiwa was established as a not-for-profit Native CDFI on January 6, 2011 and received its 501 (c)(3) status on January 6, 2011. It was certified as a Native CDFI on September 17, 2013. Tiwa operates from a small 2- room tribal office located in the same building as the Governor's office. Operating under a 5-member Board of Directors and a staff of two (Sheila Herrera, Executive Director, and Miranda Lente, Loan Assistant/Homeownership Counselor), Tiwa has in its 8 years of operation accrued a mortgage portfolio of 78 loans totaling \$7.4 million. Additionally, Tiwa has originated \$1,209,864.00 in consumer loans, including credit repair loans, personal loans, education loans, business loans, and debt consolidation loans, and has provided credit counseling to 885 Isleta tribal members and Native American youth. Tiwa works closely with its borrowers.

Tiwa's home loan portfolio and consumer loans have a less than 1% delinquent status. Additionally, Tiwa provides Financial Literacy and Education classes. To date, 266 Isleta residents have received financial literacy certificates. Tiwa also sponsors youth financial education conferences and is a Voluntary Income Tax Assistance (VITA) site.

Lending and Financial Services in Isleta Pueblo:

Lack of credit and lack of financial sophistication present barriers to obtaining fair financing to meet the housing and economic needs of the Isleta community. Other than Tiwa, there are no banking or lending services in Isleta. Prior to Tiwa, most borrowing took place among family members and payday lenders located outside the reservation. The presence of Tiwa and the ability of residents to take out consumer loans have resulted in a decreased use of residents using payday lenders located in the surrounding communities. An estimated 10% of applicants for home loans reveal that they use pay day lenders to repay other debts. Banks in the surrounding communities do not provide financial access to those with lower income and impaired credit. Nor do they provide financial education. The majority of Isleta Pueblo residents are first and second generation wage earners. Purchasing is largely done with cash. The primary use of financial services by Isleta residents and other Native Americans in the surrounding communities are for check cashing services, car loans, and farm equipment loans. Applicants for home loans state that they are turned down by other financial institutions due to lack of a down payment and/or poor credit history. These factors contribute to the reasons why Isleta residents are not able to obtain services from financial institutions.

Unique Benefits Provided by Tiwa:

Tiwa's products and services meet a double bottom line by providing social returns to its borrowers and financial returns to TIWA by having the following unique features:

- 1) All of Tiwa's lending products have flexible underwriting criteria. Applicants are not required to have credit history. Home loans, including loans for rehabilitation, have a maximum loan to value ratio of 100%. Mortgage loans do not require a down payment. Home loans have low interest rates equal to the 30 year Treasury bond rate (2.12% as of October 3, 2019) plus 1.375, lower than rates offered by other financial institutions. Closing costs and origination fees can be financed in the loan amount. Although financial institutions in Albuquerque provide

home loans to some tribal members, the loans are limited to borrowers who have good credit and down payment funds. These loans have higher interest rates than Tiwa's loans.

2) Tiwa provides homeownership and financial education and small business workshops, changing the lives of future generations and the economic picture in Isleta. Here is a story of one such family:

Carrie (not her real name), a member of the Isleta Pueblo, improved her credit score by 87 points in less than two years with the help of Tiwa. As a teen parent, Carrie didn't realize the impact that her credit score could have on her life and her ability to access credit. Now, as a mother of five children and the only working member of her household, she sought a loan from Tiwa for extra help during the holidays and was provided with the credit counseling and education that would allow her to create a positive payment history and rebuild her credit. Not only did Carrie learn how to take action to positively impact her score, she has started educating her children on the importance of credit scores. Without the loan and counseling from Tiwa, Carrie says she wouldn't be where she is today.

3) Tiwa requires all borrowers to either take a financial education class that Tiwa teaches or one on one counselling with Tiwa.

4) Tiwa collaborates with the Isleta Pueblo Housing Authority (IPHA), the Pueblos's Tribally Designated Housing Entity, and Pueblo of Isleta departments, such as the Social Services Department, the Library, the Elderly Center, and the Scholarship Office, to market its financial products and development services. Additionally, Tiwa publishes its products and services in the Isleta Pueblo newsletter and posts its publications at public places in Isleta – the post office, the Recreation Center, the Elderly Center, the IPHA Office, and the Governor's Office. Tiwa has a website, www.tiwalending.org, where it posts its products and upcoming homeownership financial education workshops. To reach Native Americans in the surrounding communities, it posts announcements at post offices and court houses.

5) Tiwa knows its borrowers and works with them closely to ensure they remain successful borrowers. For example, Tiwa contacts delinquent borrowers by telephone to find out their situation and work with them to resolve the delinquency while the delinquency is still manageable. In a pre-foreclosure situation, Tiwa worked closely with the family and the Pueblo

of Isleta to identify a family member who could assume the loan. Most recently, Tiwa is working with the family of a deceased borrower to identify a qualified family member who can assume the loan.

Tribal Support of Tiwa:

Isleta Pueblo is a gaming tribe. I tell you this so you will know how gaming has finally brought us some of the community and economic development benefits already enjoyed by the rest of America. Our leaders have always known that a balancing of the old and the new is the best way to live in dual worlds. We want our children to continue to talk the Tiwa language and practice the Pueblo traditions while obtaining the education necessary to have what the rest of America has, a safe home and a secure future. It is with this mindset that the Pueblo expends its gaming revenues on economic and community development and has a land policy that allows for the free transfer of tribal trust lands among tribal members and leasehold mortgaging for housing development.

The Pueblo provides capital to Tiwa. By providing capital to Tiwa to assist families become self-sufficient, the Pueblo is able to support housing, community, and economic development on the Pueblo.

By having a land policy that allows for the free transfer of tribal trust lands among tribal members, and mortgaging of land interests, and removing cumbersome processes for leasing and mortgaging inherent in traditional lending, the Pueblo is able to ensure that families have access to financial and homeownership opportunities. As you might know, tribal trust lands are unalienable. They can only be transferred among tribal members. We feel we are unique as Pueblos in our policy of making tribal trust lands freely alienable among tribal members. This policy has allowed tribal members to use their land assignments and residential leases as collateral not only for purposes of building a home but to allow tribal members to obtain tribal land by purchase and to borrow money for business purposes and to build their credit. In our Pueblo, tribal members are able to not only mortgage their residential lease, but also to use their land assignments as collateral for a loan.

Funding Available to Tiwa:

Tiwa receives financial support from the U.S. Department of Treasury Native American CDFI Assistance Program (NACA Program), an annual competitive funding process; the Pueblo of

Isleta; and loans from other non-profits. It recently borrowed money from Oweesta, another Native CDFI. Capital also comes from the revenue from the loan portfolios. Like other Native CDFIs, Tiwa's primary challenge is lack of funding to meet the lending needs of its community, and consistently seeks funds. For example, Tiwa has a waiting list of 29 tribal members that desire to obtain a home loan. The NACA Funds are available on a competitive basis, and while the application process is cumbersome and requires grant writing experience, this funding is vital to Tiwa's economic development initiatives.

However, the NACA Funds are insufficient for all Native CDFIs competing for the funds. As of 2018, there were 73 certified Native CDFIs, with many other working towards becoming certified. Thirty-Eight Native CDFIs, including Tiwa, benefited from the \$15.3 million in grants in FY 2018. While Tiwa applied for funding in the 2019 funding round, funding awards have not yet been posted. In 2019, Wells Fargo provided \$100,000 to Tiwa for down payment assistance. Unfortunately, Tiwa was unable to provide this funding to potential borrowers for lack of loan funds to lend and was only able to utilize 20% of the funds before the Wells Fargo timeline of one year.

Increased funding for the NACA CDFI Fund, who make such a big economic impact in tribal communities, is vital to economic growth on Indian reservations.

Other Major Challenges:

In addition to lack of sufficient funding to lend, Tiwa faces two other major challenges that it has been working to address, with the assistance of the Pueblo.

1. The inability to use federal funds on flood plains.

The inability to use federal funds as down payment assistance on flood plains means that the Isleta Pueblo Housing Authority can't provide down payment assistance to TIWA lenders using federal funds. Both HUD Indian Housing Block Grant (IHBG) and Indian Community Development Block Grant (ICDBG) funds may be used as down payment assistance. Like many other Pueblos,

the River Grande river runs through tribal lands. Sometime around 2010, without consent of the Pueblo, FEMA aerially flood mapped Pueblo lands and published a large part of Isleta's residential areas, including areas with HUD-assisted homes, as being in special flood hazard areas (SFHA), also referred to as floodplains. The Federal Flood Disaster Protection Act of 1973⁶ (the "Act") prohibits the use of federal funds, including IHBG and ICDBG, on floodplains unless a community or tribe participates in the National Flood Insurance Program (NFIP) and purchases flood insurance.

While other tribes have had their lands flood mapped, it has been with their written consent, and they have been given the option of publishing the flood maps. In response to why Isleta was not given this option, the FEMA response has been that after the Isleta experience, tribes were given the publication option.

Flood insurance is expensive. The inability of low income borrowers to use federal funds as down payment assistance for the rehabilitation of homes on floodplains, many which are in substandard and dilapidated condition, makes it prohibitive to qualify for a loan. Further, the flood mapping in Isleta was done without detailed studies to determine Base Flood Elevations (BFEs), which are necessary to obtain certified elevations for insurance. Obtaining flood insurance will require a borrower to engage a surveyor to conduct detailed studies to determine BFEs.

Even if a tribe mitigates flood risks, the Act prohibits the use of federal funds on homes on floodplains unless a tribe joins the NFIP. A community (including a tribe) that participates in the NFIP is required to adopt flood standards on floodplains as established by the NFIP and enforce these standards. Adopting an approved NFIP flood ordinance is a burdensome and costly process that requires a tribe to hire a certified flood plain manager, develop and enforce flood standards, require certified elevations when building or rehabilitating on floodplains, and maintain tribal

⁶ 42 U.S.C. 4106(a).

records on all new home construction and rehabilitation. Few tribes participate in the NFIP likely due to the administrative, technical, and financial burdens imposed by the NFIP.

States are granted an exemption from the Act's requirement that a community join the NFIP before using federal funds on floodplains.⁷ The state exemption applies to federal affordable housing funds provided to states, including HOME funds and CDBG funds, and HUD regulations at 24 CFR 58.6(a)(3) – the HUD environmental regulations, and 24 CFR Part 55.1 (b)(1) – the HUD floodplain management regulations, implement this federal exemption. The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) Reauthorization Bill contains a provision that would give tribes the same exemption already enjoyed by states, and allow tribes to use IHBG and other federal affordable housing funds on floodplains utilizing a tribe's mitigation plan, without requiring a tribe to join the NFIP. This provision will allow tribes and their Tribally Designated Housing Entities to provide down payment assistance funds to low income borrowers for home construction or rehabilitation. We ask for your support of the NAHASDA Reauthorization bill. The Pueblo of Isleta is working on developing a flood assessment and flood mitigation plan.

2. Federal land laws and policies applicable to tribal trust lands.

Federal land laws, found at 25 USC 81 and 25 CFR 162, restrict the ability of tribes to encumber land without approval of the Bureau of Indian Affairs (BIA), and is the biggest challenge to lending on tribal trust lands. Mortgaging land obviously encumbers land. As you may have heard from other tribes, the BIA lease and mortgage approval and recording process is lengthy and cumbersome. Prior to approving a lease, BIA first conducts a title status report (TSR). Then, it reviews and approves a lease already approved by the tribe. Then, before approving a mortgage, if too much time has occurred since approving the lease, it conducts another TSR. Then it reviews and approves the mortgage. Both the lease and mortgage then get routed to the Office of Land, Titles and Records (OLTR) for recording, most of the time in two separate processes. Each step in the process can take months, and the entire process can take more than a year. For example,

⁷ See 42 U.S.C. 4003(a)(3).

Tiwa has waited 12 months for a TSR, 12 months for BIA approval of a lease or mortgage, and 24 plus months before receiving the recorded lease and mortgage from BIA.

The time it takes to close a loan on Indian trust lands deters many lenders. To shorten the timelines, Isleta, along with Acoma and Zuni, worked closely with Senator Heinrich to enact HEARTH in 2012. HEARTH, which means Helping Expedite and Advance Responsible Homeownership, is the federal law that allows tribes to enact leasing laws and approve specific types of land leases, including residential leases, without further approval by BIA. While HEARTH is an expensive law for tribes to implement due to a tribe taking on BIA's role of reviewing and enforcing leases and mortgages, preparing surveys, and conducting environmental reviews, and the reason why it took Isleta Pueblo so long to enact, it improves the timeline for closing on loans, making lending more attractive on tribal trust lands.

BIA approved Isleta's leasing law in April 2019. Isleta is in the process of planning the implementation of this law, which will require funding to hire a leasing officer and contract with surveyors and environmental review firms to conduct environmental reviews. Once implemented, Tiwa anticipates that the time for closing on leasehold mortgages will be cut by more than half. The ability to bypass the lengthy BIA review and approval process will allow Tiwa and other lenders to close on mortgages within weeks versus months.

However, HEARTH doesn't address the TSR process which must still be conducted by BIA. Neither the Pueblo nor Tiwa have yet tackled this difficult issue. What we have learned from talking with other tribes is that while some tribes have taken on recording as a function, it is an expensive endeavor and one which requires an expensive database compatible with the BIA titling system. While we have discussed the ability of the BIA titling system to become privatized, we realize that this is a discussion that must involve BIA. We ask for your support in helping tribes find a solution to this issue.

Conclusion:

Thank you for your time in listening to this testimony. Please feel free to contact me at (505) 869-3111, or Sheila Herrera, Executive Director of Tiwa, at (505) 916-0556 if you have any questions or need any further information regarding this written testimony.















