

U.S.C. 4321 *et seq.*) as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). A low-effect project involves (1) minor or negligible effects on federally-listed or candidate species or their habitats, and (2) minor or negligible effects on other environmental values or resources. Further, we specifically solicit information regarding the adequacy of the agreement per 50 CFR parts 13 and 17.

### Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to comment, you may submit comments by any one of several methods. Please reference TE 71956B or TE 71959B in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to [david\\_dell@fws.gov](mailto:david_dell@fws.gov) or [michael\\_harris@fws.gov](mailto:michael_harris@fws.gov). Please include your name and return address in your email message. If you do not receive a confirmation from us that we have received your email message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**.

### Covered Area

The agreement covers approximately 439,792 acres of potentially eligible lands in the upper Saline River watershed; 412,556 acres of potentially eligible lands in the upper Ouachita River watershed; and 235,010 acres of potentially eligible lands in the upper Caddo River watershed. Lands eligible to enroll in the agreement include any non-Federal properties within the watershed of the upper Saline, Caddo, and Ouachita Rivers.

### Next Steps

We will evaluate the enhancement of survival permit application, including the agreement and any comments we receive, to determine whether the applications meet the requirements of section 10(a)(1)(A) of the Act. We will also evaluate whether the section

10(a)(1)(A) enhancement of survival permits would comply with section 7 of the Act by conducting an intra-Service section 7 consultation. If we determine that the requirements are met, we will issue a permit under section 10(a)(1)(A) of the Act to the Applicants in accordance with the applicable regulatory requirements. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

### Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 29, 2015.

**Mike Oetker**,

*Deputy Regional Director.*

[FR Doc. 2015-20960 Filed 8-25-15; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

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### HEARTH Act Approval of Squaxin Island Tribe Regulations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** On August 20, 2015, the Bureau of Indian Affairs (BIA) approved the Squaxin Island Tribe leasing regulations under the HEARTH Act. With this approval, the Tribe is authorized to enter into business leases without BIA approval.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Morales, Office of Trust Services—Division of Realty, Bureau of Indian Affairs; Telephone (202) 768-4166; Email: [cynthia.morales@bia.gov](mailto:cynthia.morales@bia.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Summary of the HEARTH Act

The HEARTH (Helping Expedite and Advance Responsible Tribal Homeownership) Act of 2012 (the Act) makes a voluntary, alternative land leasing process available to tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The Act authorizes tribes to negotiate and enter into agricultural and business leases of tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior. The Act also authorizes tribes to enter into leases for residential, recreational, religious or

educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating tribes develop tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The Act requires the Secretary to approve tribal regulations if the tribal regulations are consistent with the Department's leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the tribal regulations for the Squaxin Island Tribe.

#### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and tribal sovereignty. 77 FR 72440, 72447-48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant State, Federal, and tribal

interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [tribes] to approve leases quickly and efficiently." *Id.* at 5–6.

Assessment of State and local taxes would obstruct these express Federal policies supporting tribal economic development and self-determination, and also threaten substantial tribal interests in effective tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs. *See id.* at 2043–44 (finding that State and local taxes greatly discourage tribes from raising tax revenue from the same sources because the imposition of double taxation would impede tribal economic growth).

Just like BIA's surface leasing regulations, tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act, NPM–TRUS–29 (effective Jan. 16, 2013) (providing guidance on Federal review process to ensure consistency of proposed tribal regulations with Part 162 regulations and listing required tribal regulatory provisions). Furthermore, the Federal government remains involved in the tribal land leasing process by approving the tribal leasing regulations in the first

instance and providing technical assistance, upon request by a tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the tribal regulations, including terminating the lease or rescinding approval of the tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Squaxin Island Tribe.

Through the Congressionally-authorized Land Buy Back Program for Tribal Nations, the Squaxin Island Tribe has recovered the equivalent of more than 155 acres of land in trust. This initiative reflects the Federal policy of reducing the problem of fractionated interests in land and restoring tribal homelands. The approval of tribal leasing regulations has the potential to expand tribal sovereignty and increase tribal economic development on some of these newly consolidated lands.

Dated: August 20, 2015.

**Kevin K. Washburn,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

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### HEARTH Act Approval of Makah Indian Tribe of the Makah Indian Reservation Regulations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** On August 18, 2015, the Bureau of Indian Affairs (BIA) approved the Makah Indian Tribe of the Makah Indian Reservation leasing regulations under the HEARTH Act. With this approval, the Tribe is authorized to enter into the following type of leases without BIA approval: Residential,

business, wind and solar development, and other authorized purposes.

#### **FOR FURTHER INFORMATION CONTACT:**

Cynthia Morales, Office of Trust Services—Division of Realty, Bureau of Indian Affairs; Telephone (202) 768–4166; Email [cynthia.morales@bia.gov](mailto:cynthia.morales@bia.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Summary of the HEARTH Act**

The HEARTH (Helping Expedite and Advance Responsible Tribal Homeownership) Act of 2012 (the Act) makes a voluntary, alternative land leasing process available to tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The Act authorizes tribes to negotiate and enter into agricultural and business leases of tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior. The Act also authorizes tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating tribes develop tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The Act requires the Secretary to approve tribal regulations if the tribal regulations are consistent with the Department's leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the tribal regulations for the Makah Indian Tribe of the Makah Indian Reservation.

##### **II. Federal Preemption of State and Local Taxes**

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian tribe with jurisdiction. *See* 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related