

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. 5108, 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)). Similarly, section 465 preempts State taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See *Seminole Tribe of Florida v. Stranburg*, No. 14–14524, \*13–\*17, n.8 (11th Cir. 2015). 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 72,447–48, 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).

Similar to BIA’s surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). 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 Oneida Nation of Wisconsin.

Dated: January 23, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs Exercising the Authority of the Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0025286; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by May 21, 2018.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State Street, Madison, WI 53706, telephone (608) 264–6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from the Pleasant Plain Group site, Barron County, and the Mertig Site, Sawyer County, WI.

This notice is published as part of the National Park Service’s administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and Upper Sioux Community, Minnesota.

### History and Description of the Remains

In 1947, human remains representing, at minimum, two individuals were removed from the Pleasant Plain Group (47-BN-0025) in Barron County, WI. The site consists of 27 mounds, including 15 conical mounds, 12 oval or linear mounds, and one "catfish" or "tadpole" mound. The human remains representing one adult male and one possible adult male were found in a single sub-floor burial pit in the center of Mound 2 by Robert R. Jones and students of the University of Wisconsin Extension Center. It is not clear what type of mound Mound 2 was. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from the Mertig Site (47-SY-0042) in Sawyer County, WI. Landowner Fred Mertig found partially cremated human remains while leveling the mounds. He also recovered two copper beads, one of which enclosed a piece of buckskin. In 1956, Mertig sent the human remains and copper beads to the Wisconsin Historical Society for analysis. The recovery location of the copper beads is unknown and there is a lack of information to indicate they were associated funerary objects. Skeletal analysis determined the human remains represent one adult and one child, both of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

### Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, oral histories, and skeletal analysis.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereafter referred to as "The Aboriginal Land Tribes").

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

### Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State Street,

Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org), by May 21, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes, Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Menominee Indian Tribe of Wisconsin; and Upper Sioux Community, Minnesota, that this notice has been published.

Dated: March 22, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0025293; PPWOCRADNO-PCU00RP14.R50000]

### Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by May 21, 2018.