

*Respondent's Obligation:*  
Participation is voluntary.

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected, and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

## C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

**Kurt G. Usowski,**

*Deputy Assistant Secretary for Economic Affairs.*

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BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[234A2100DD/AAKC001030/  
AOA501010.999900]

### HEARTH Act Approval of Prairie Band Potawatomi Nation Residential Leasing Ordinance Leasing Ordinance

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

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Prairie Band Potawatomi Nation Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into residential leases without further BIA approval.

**DATES:** BIA issued the approval on September 21, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carla Clark, Bureau of Indian Affairs,

Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov*, (702) 484-3233.

## I. Summary of the HEARTH Act

The HEARTH 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 HEARTH Act authorizes Tribes to negotiate and enter into 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 (Secretary). The HEARTH 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 HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Prairie Band Potawatomi Nation.

## 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 (IRA), 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 5108 of the IRA 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*, 799 F.3d 1324, 1331, 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 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." H. Rep. 112-427 at 6 (2012).

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*, 572 U.S. 782, 810 (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 810–11 (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 25 CFR 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 25 CFR part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Prairie Band Potawatomi Nation.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[234A2100DD/AAKC001030/  
AOA501010.999900]

### Proclaiming Certain Lands as Reservation for Confederated Tribes of the Chehalis Reservation of Washington

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

**ACTION:** Notice of reservation  
proclamation.

**SUMMARY:** This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 254.363 acres, more or less, as an addition to the reservation of Confederated Tribes of the Chehalis Reservation of Washington.

**DATES:** This proclamation was made on September 21, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carla H. Clark, Bureau of Indian Affairs, Acting Division Chief, Division of Real Estate Services, 1001 Indian School Road NW, Box #44, Albuquerque, New Mexico 87104, *Carla.Clark@bia.gov*, (720) 424–3233.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation is issued in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. The lands are proclaimed to be the Confederated Tribes of the Chehalis Reservation of Washington for Chehalis Tribe in Thurston and Grays Harbor County, Washington.

### Confederated Tribes of the Chehalis Reservation of Washington, 7 Parcels, Willamette Meridian, Thurston County and Grays Harbor County, Washington Legal Descriptions Containing 254.363 Acres, More or Less

105–T2213

Parcel A

That part of Tract 19 of Jackson Fruit Tracts as recorded in Volume 8 of Plats, Page 54, described as follows:

Beginning at the Northwest corner of said Tract 19; thence East 300 feet to the True Point of Beginning; thence South 145 feet thence West 25 feet; thence South to the North right-of-way line of County Road; thence Easterly along said right-of-way to the East line of said

Tract 19; thence North to the South right-of-way line of Second Street thence West along right-of-way line to the Point of Beginning. Together with that part of vacated road adjoining said premises on the South which was vacated in Volume 28 of the County Commissioner’s minutes, Page 246.

Parcel B

The West 300 feet of the North 145 feet of Tract 19, Jackson Fruit Tracts, as recorded in Volume 8 of Plats, page 54; Excepting therefrom the West 2A30 feet.

Parcel C

That part of the East 110 feet of the West 275 feet of Tract 19 of Jackson Fruit Tracts as recorded in Volume 8 of Plats, Page 54, lying Northerly of County Road. Excepting therefrom the North 145 feet and the West 230 feet of the South 45 feet of the North 190 feet of said Tract 19. Together with that part of vacated County Road adjoining said premises on the South which was vacated in Volume 28 of County Commissioner’s minutes, Page 245.

Parcel D

The West 230 feet of the North 190 feet of Tract 19, Jackson Fruit Tracts, as recorded in Volume 8 of Plats, Page 54. Excepting therefrom that portion conveyed to Thurston County by deed recorded February 10, 1998, under Auditor’s File No. 3134738.

Parcel E

The West 165 feet of that portion of Tract 19 of Jackson Fruit Tracts as recorded in Volume 8 of Plats, Page 54, lying Northerly of Tract conveyed to the State of Washington by deed dated October 28, 1952, and recorded under file no. 514194; together with that part, if any, of vacated road adjoining said premises on the Southeast which was vacated in Volume 28 of County Commissioner’s minutes, Page 245.

Excepting therefrom the Northerly 190 feet; and that portion lying in Tract conveyed to the State of Washington by deed dated June 27, 1958 and recorded under file no. 599495. And Excepting therefrom that portion conveyed to Thurston County by deed recorded February 10, 1988, under file no. 3134737. In Thurston County Washington. Containing 4.47 acres, more or less.

105–T2210

Parcel A

The South 445 feet of Government Lot 4 in Section 3, Township 16 North, Range 5 West of the Willamette Meridian; Situate in the County of Grays Harbor, State of Washington.