

Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

**Steven Fortier,**

Director, National Minerals Information Center, U.S. Geological Survey.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[223A2100DD/AAKC001030/  
AOA501010.999900]

### HEARTH Act Approval of Nisqually Indian Tribe Leasing Ordinance

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

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Nisqually Indian Tribe 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 business, religious, educational, recreational, cultural, and public purpose leases without further BIA approval.

**DATES:** BIA issued the approval on August 30, 2022.

**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](mailto:carla.clark@bia.gov), (702) 484–3233.

#### SUPPLEMENTARY INFORMATION:

##### 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 Nisqually Indian 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. 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 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 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 Nisqually Indian Tribe.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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A0A501010.999900]

**Land Acquisitions; Oneida Nation,  
West Mason Site, Brown County,  
Wisconsin**

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

**ACTION:** Notice.

**SUMMARY:** The Assistant Secretary—Indian Affairs made a final agency determination to acquire in trust 1.411 acres, more or less, of land known as the West Mason Site in Green Bay, Brown County, Wisconsin, (Site) for the Oneida Nation, (Nation) for gaming and other purposes.

**DATES:** This final determination was made on September 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Mailstop 3543, 1849 C Street NW, Washington, DC 20240, [paula.hart@bia.gov](mailto:paula.hart@bia.gov), (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs made a final agency determination to acquire the Site, consisting of 1.411 acres, more or less, in trust for the Nation under the authority of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. 5108.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Site in the name of the United States of America in trust for Nation upon fulfillment of all Departmental requirements. The legal description for the West Mason Site is as follows:

That part of Lot Nineteen (19), according to the recorded plat of First Addition to Packerland Subdivision and part of vacated Frontage Road abutting said Lot, in Section Twenty (29), Township Twenty-four (24) North, Range Twenty (20) East of the Fourth Principal Meridian, in the City of Green Bay, West side of Fox River, Brown County, Wisconsin, described as follows:

Beginning at the Northwest corner of said Lot Nineteen (19); thence South 89°47'40" East 233.70 feet along the North line of said Lot; thence South 0°23'31" East 261.67 feet on a line which is the center line of a 10 inch thick building wall, prolonged Northerly and Southerly of a building now located on said Lot Nineteen (19); thence South 89°46'17" West 234.60 feet along the North line of the Frontage Road; thence North 0°11'51" West 263.43 feet along the West line of Lot Nineteen (19) to the point of beginning.

**Authority:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[223.LLUT980300.L12200000.NPM0000]

**Notice of Public Meetings, Utah  
Resource Advisory Council, Utah**

**AGENCY:** Bureau of Land Management,  
Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council will meet as indicated below.

**DATES:** The Utah Resource Advisory Council will hold meetings on Oct. 19, 2022, Jan. 18, 2023, and May 17, 2023,

with a field tour on May 18, 2023. Each meeting will be held in-person with a virtual participation option. All meetings will occur from 8 a.m. to 5 p.m. Public comments will be received from 4 p.m. to 4:30 p.m. each meeting day. The meetings are open to the public.

**ADDRESSES:** The Oct. 19 meeting will be held at the BLM Utah West Desert District Office, 491 North John Glenn Road, Salt Lake City, UT 84116. The Jan. 18 meeting will be held at the BLM Utah Green River District Office, 170 South 500 East, Vernal, UT 84078. The May 17 meeting will be held at the BLM Utah Color Country District Office, 176 East D.L. Sargent Drive, Cedar City, UT 84721. The May 18 field tour will visit wind and solar farms in Milford, Utah. The agenda and in-person/virtual meeting access information will be posted on the Utah Resource Advisory Council web page 30 days before each meeting at: <https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/RAC>. Participants wishing to virtually attend the meeting should register 24 hours in advance of the start time(s). Written comments to address the Utah Resource Advisory Council may be sent in advance of the meeting(s) to the BLM Utah State Office, Attention: Melissa Schnee, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, or via email to: [BLM\\_\\_UT\\_\\_External\\_\\_Affairs@blm.gov](mailto:BLM__UT__External__Affairs@blm.gov) with the subject line “Utah RAC Meeting.”

**FOR FURTHER INFORMATION CONTACT:**

Melissa Schnee, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4001; or email [mschnee@blm.gov](mailto:mschnee@blm.gov).

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please contact Melissa Schnee for reasonable accommodations to participate.

**SUPPLEMENTARY INFORMATION:** The Utah Resource Advisory Council provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public lands issues. Agenda topics for the October meeting include updates and/or discussions about BLM Utah priorities, district planning efforts, BLM Utah advisory councils, monument planning efforts, BLM and U.S. Department of Agriculture Forest Service (USDA Forest Service)