

The above-described lands contain a total of 254.363 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2023–21300 Filed 9–28–23; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[234A2100DD/AAKC001030/  
AOA51010.999900]

#### Proclaiming Certain Lands as Reservation for Kalispel Indian Community of the Kalispel Reservation

**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 20.06 acres, more or less, as an addition to the reservation of Kalispel Indian Community of the Kalispel Reservation.

**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 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 Kalispel Reservation for the Kalispel Indian Community of the Kalispel Reservation in Pend Oreille County, Washington.

**Parcel No.:** 443205320003; 14962 HWY 211  
Property (a.k.a. Gould Property)

103–T1025

That portion of the Northwest Quarter of the Southwest Quarter of Section 5,

Township 32 North, Range 44 E. W.M., Pend Oreille County, Washington, lying West of Highway 20 and East of Highway No. 211 (formerly No. 6B).

Situate in Pend Oreille County,  
Washington

Containing 20.06 acres, more or less.

The above described lands contain a total of 20.06 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2023–21297 Filed 9–28–23; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[234A2100DD/AAKC001030/  
AOA51010.999900]

#### HEARTH Act Approval of Soboba Band of Luiseño Indians, California Residential Leasing Ordinance

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

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Soboba Band of Luiseño Indians, California Residential 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 Soboba Band of Luiseño Indians, California.

#### 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 Soboba Band of Luiseño Indians, California.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[234A2100DD/AAKC001030/  
A0A501010.999900]

#### **HEARTH Act Approval of Prairie Band Potawatomi Nation Agricultural 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 agricultural 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