

and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

## II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, “Delivering an Efficient, Effective, and Accountable Government,” and the President’s Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

## III. Permit Applications

### *Endangered Species*

Applicant: Fort Worth Zoo, Fort Worth, TX; PRT-93340B

The applicant requests a permit to import one female and one male Sumatran orangutan (*Pongo pygmaeus*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Saint Louis Zoo, St. Louis, MO; PRT-79205B

The applicant requests a permit to export one male and one female North Sulawesi babirusa (*Babyrousa celebensis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Xochitl De La Rosa Reyna, College Station, TX; PRT-87845B

The applicant requests a permit to import biological samples from wild olive Ridley sea turtle (*Lepidochelys olivacea*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kevin Petersen, Hyrum, UT; PRT-98525B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

### **Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[167A2100DD/AAKC001030/  
A0A501010.999900]

### HEARTH Act Approval of Twenty-Nine Palms Band of Mission Indians of California Regulations

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

**ACTION:** Notice.

**SUMMARY:** On June 14, 2016, the Bureau of Indian Affairs (BIA) approved the Twenty-Nine Palms Band of Mission

Indians of California (Tribe) leasing regulations 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 site leases without BIA approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS-4642-MIB, 1849 C Street NW., Washington, DC 20240, at (202) 208-3615.

### 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 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 (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 Twenty-Nine Palms Band of Mission Indians of California.

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

The Department 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)). 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 Federal, state, 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).

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 part 162 of the 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 at part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Twenty-Nine Palms Band of Mission Indians of California.

Dated: June 14, 2016.

**Lawrence S. Roberts,**  
Acting Assistant Secretary—Indian Affairs.  
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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[167A2100DD/AAKC001030/  
AOA501010.999900]

### HEARTH Act Approval of Oneida Nation of New York Regulations

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

**ACTION:** Notice.

**SUMMARY:** On June 14, 2016, the Bureau of Indian Affairs (BIA) approved the Oneida Nation of New York (Tribe) leasing regulations under the HEARTH Act. With this approval, the Tribe is authorized to enter into residential leases without BIA approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MIB, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208–3615.

#### SUPPLEMENTARY INFORMATION:

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

The HEARTH (Helping Expedite and Advance Responsible Tribal Homeownership) Act of 2012 (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 Secretary). 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 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 Act. This notice announces that the Secretary, through the Assistant