

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs**

[201A2100DD/AAKC001030/
AOA501010.999900]

HEARTH Act Approval of Catawba Indian Nation Business Leasing Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On June 25, 2020, the Bureau of Indian Affairs (BIA) approved the

Catawba Indian Nation's 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 leases without further BIA approval.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, sharelene.roundface@bia.gov, (505) 563-3132.

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 Catawba Indian 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, 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 Catawba Indian Nation.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0030389;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Nashville District, Nashville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Army Corps of Engineers, Nashville District (USACE), has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on July 19, 2017. This notice corrects the number of associated funerary objects.

ADDRESSES: Dr. Valerie McCormack, Archeologist, Department of Defense, Nashville District, Corps of Engineers, U.S. Army Corps of Engineers, Nashville District, 110 9th Avenue South, Room A-405, Nashville, TN 37203, telephone (615) 736-7847, email Valerie.j.mccormack@usace.army.mil.

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 correction of an inventory of human remains and associated funerary objects under the control of the U.S. Army Corps of Engineers, Nashville District, Nashville, TN. The human remains and associated funerary objects were removed from Stewart County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). 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 and

associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (82 FR 33155-33156, July 19, 2017). During a re-inventory of the collection, an additional 11 associated funerary objects from site 40SW23 were located.

Correction

In the **Federal Register** (82 FR 33155, July 19, 2017), column 2, paragraph 3, sentence 9 is corrected by substituting the following sentence:

The 11 associated funerary objects are limestone slabs from a stone box grave.

In the **Federal Register** (82 FR 33156, July 19, 2017), column 1, paragraph 3, sentence 3 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(3)(A), the 142 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

For questions related to this notice, contact Dr. Valerie McCormack, Archeologist, Department of Defense, Nashville District, Corps of Engineers, U.S. Army Corps of Engineers, Nashville District, 110 9th Avenue South, Room A-405, Nashville, TN 37203, telephone (615) 736-7847, email Valerie.j.mccormack@usace.army.mil.

The U.S. Army Corps of Engineers, Nashville District, is responsible for notifying the Cherokee Nation, Eastern Band of the Cherokee Indians, and the United Keetoowah Band of the Cherokee Indians in Oklahoma that this notice has been published.

Dated: May 27, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

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DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0030388;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: California Department of Transportation, Sacramento, CA, and Fowler Museum at the University of California Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Transportation and the Fowler Museum at the University of California Los Angeles (UCLA) have 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 a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or 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 California Department of Transportation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or 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 California Department of Transportation at the address in this notice by August 5, 2020.

ADDRESSES: Sarah Allred, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271-0001, telephone (916) 653-0013, email Sarah.Allred@dot.ca.gov.

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 and associated funerary objects under the control of the California Department of Transportation, Sacramento, CA, and in the physical custody of the Fowler Museum at the University of California Los Angeles, Los Angeles, CA. The human remains and associated funerary objects were removed from Batiquitos Lagoon, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). 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 and associated funerary objects. The