

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 Table Mountain Rancheria.

## 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 CF 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 Table Mountain Rancheria.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2022–04093 Filed 2–25–22; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[223A2100DD/AAKC001030/  
AOA501010.999900]

### HEARTH Act Approval of Kootenai Tribe of Idaho Business Leasing Ordinance

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

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Kootenai Tribe of Idaho Business 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 leases without further BIA approval.

**DATES:** BIA issued the approval on February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, [sharlene.roundface@bia.gov](mailto:sharlene.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 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 Kootenai Tribe of Idaho.

**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.

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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 Kootenai Tribe of Idaho.

**Wizipan Garriott,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.*

[FR Doc. 2022-04090 Filed 2-25-22; 8:45 am]

**BILLING CODE 4337-15-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**[NPS-WASO-NAGPRA-NPS0033436; PPWOCRADN0-PCU00RP14.R50000]**

**Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Pueblo Grande Museum, City of Phoenix, AZ**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Washington, DC, assisted by the Pueblo Grande Museum (PGM), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, have determined that the cultural items listed in this notice meet the definition of either unassociated funerary objects or sacred objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the BIA through PGM. If no additional claimants come forward, transfer of control of the cultural items 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 claim these cultural items should submit a written request with information in support of the claim to the BIA through PGM at the address in this notice by March 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85034, telephone (602) 534-1572, email [lindsey.vogel-teeter@phoenix.gov](mailto:lindsey.vogel-teeter@phoenix.gov).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, Bureau of

Indian Affairs, Washington, DC, and in the physical custody of the Pueblo Grande Museum, City of Phoenix, AZ, that meet the definition of either unassociated funerary objects or sacred objects under 25 U.S.C. 3001.

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 cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

In December of 1939, 184 cultural items were removed from site AZ T:12:3(PGM)/AZ T:12:9(ASM)/SRVSS Site 6/Villa Buena, located within the boundaries of the Gila River Indian Reservation, Maricopa County, AZ. These items were excavated by personnel from the Salt River Valley Stratigraphic Survey (SRVSS), who were working out of PGM under a permit issued by the U.S. Department of the Interior. The cultural items, comprising 12 unassociated funerary objects and 172 sacred objects, have been housed at PGM since they were excavated. The 12 unassociated funerary items are one ceramic bowl, one ceramic disk, two ceramic jars, one lot of ceramic sherds, one grinding stone, three lots of shell beads, two shells, and one stone projectile point/drill. The 172 sacred objects are two ceramic censer fragments, three ceramic figurine fragments, one ceramic thick-walled vessel fragment, three crystal/quartz objects, seven worked faunal bones, 39 lots of shell beads, three shell bracelets, 37 lots of shell fragments, 48 shell ornaments, three shell tinklers, two stone mortars/stones with depression, two stone ornaments, one stone plummet, six stone rings, and 15 stone projectile points.

Site AZ T:12:3(PGM)/AZ T:12:9(ASM)/SRVSS Site 6/Villa Buena contained ballcourts, house mounds, and a compound. Based on ceramic types and architectural forms, the site was likely occupied during the Sweetwater through Civano phases of the Hohokam cultural sequence (A.D. 550-1450).

In October of 1939, 14 cultural items were removed from site AZ U:9:13(ASM)/AZ U:9:15(PGM)/SRVSS Site 23, located within the exterior boundaries of the Salt River Indian Reservation, Maricopa County, AZ. These items were excavated by personnel from the SRVSS, who were

working out of PGM under a permit issued by the U.S. Department of the Interior. The cultural items have been housed at PGM since they were excavated. The 14 sacred objects are one ceramic figurine fragment, two shell bracelets, four shell ornaments, one stone canopas or medicine stone, three stone palettes, one stone ornament, one stone projectile point, and one worked stone.

Site AZ U:9:13(ASM)/AZ U:9:15(PGM)/SRVSS Site 23 contained nine trash mounds, multiple burials, and a canal. The material culture spanned the Estrella through Civano phases of the Hohokam cultural sequence (A.D. 450-1450).

In October of 1939, 24 cultural items were removed from site AZ U:9:16(PGM)/SRVSS Site 24, located within the exterior boundaries of the Salt River Indian Reservation, Maricopa County, AZ. These items were excavated by personnel from the SRVSS, who were working out of PGM under a permit issued by the U.S. Department of the Interior. The cultural items have been housed at PGM since they were excavated. The 24 sacred objects are 10 ceramic figurine fragments, eight ceramic bracelets, one shell ornament, four stone palettes, and one dog burial.

Site AZ U:9:16(PGM)/SRVSS Site 24 contained a compound, a house mound, 21 trash mounds, and a burial area. Based on architectural morphology and ceramic types, occupation spanned the Estrella through Civano phases of the Hohokam cultural sequence (A.D. 450-1450).

In 1939, one cultural item was removed from site AZ U:9:18(PGM)/SRVSS Site 26, located within the exterior boundaries of the Salt River Indian Reservation, Maricopa County, AZ. This item was excavated by personnel from the SRVSS, who were working out of PGM under a permit issued by the U.S. Department of the Interior. The cultural item has been housed at PGM since it was excavated. The one sacred object is a dog burial.

Site AZ U:9:18(PGM)/SRVSS Site 26 contained a compound, two trash mounds, a sherd area, and a burial area. Based on the material culture, occupation spanned the Sacaton through Civano phases of the Hohokam cultural sequence (A.D. 900-1450).

In June through August of 1939, 28 cultural items were removed from site AZ U:9:28(PGM)/SRVSS Site 62, located within the exterior boundaries of the Salt River Indian Reservation, Maricopa County, AZ. The items were excavated by personnel from the SRVSS, who were working out of PGM under a permit