

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 reassessing 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 Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[234A2100DD/AAKC001030/A0A501010.999900]**

### Self-Governance PROGRESS Act Negotiated Rulemaking Committee; Notice of Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee), will hold the eighth public meeting to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-

Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

#### DATES:

- *Meeting:* The meeting is open to the public and to be held both in-person and virtually on Thursday, April 20, 2023, from 9:00 a.m. to 5:00 p.m. Eastern Standard Time. Please see

**SUPPLEMENTARY INFORMATION** below for details on how to participate.

- *Comments:* Interested persons are invited to submit comments on or before May 21, 2023. Please see **ADDRESSES** below for details on how to submit written comments.

**ADDRESSES:** Send your written comments to the Designated Federal Officer, Vickie Hanvey, by any of the following methods:

- *Preferred method:* Email to [comments@bia.gov](mailto:comments@bia.gov) with “PROGRESS Act” in subject line.
- Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie Hanvey, Office of Self-Governance, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW, Mail Stop 3624, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Vickie Hanvey, Designated Federal Officer, [comments@bia.gov](mailto:comments@bia.gov), (918) 931–0745.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the authority of the PROGRESS Act (Pub. L. 116–180), the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), and the Federal Advisory Committee Act (5 U.S.C. Appendix 10). The Committee is to negotiate and reach consensus on recommendations for a proposed rule that will replace the existing regulations at 25 CFR part 1000. The Committee will be charged with developing proposed regulations for the Secretary’s implementation of the PROGRESS Act’s provisions regarding the Department of the Interior’s (DOI) Self-Governance Program. See Public Law 116–180.

The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.*, which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI’s Tribal Self-Governance Program. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The **Federal Register** notice published on May 18, 2022 (87 FR 30256) discussed the issues to be

negotiated and the members of the Committee.

**Meeting Agenda/Accessibility:** These meetings are open to the public. Detailed information about the Committee, including meeting agendas can be accessed at <https://www.bia.gov/service/progress-act>. Topics for this meeting will include Committee priority setting, possible subcommittees and assignments, subcommittee reports, negotiated rulemaking process, schedule and agenda setting for future meetings, Committee caucus, and public comment. The Committee meetings will begin at 9:00 a.m. Eastern Standard Time on Thursday, April 20, 2023. Members of the public wishing to attend the meeting should visit [https://teams.microsoft.com/l/meetupjoin/19%3ameeting\\_NmU5MGQ0NDU0ZTdKMi00MzExLWlXmMmEtMjc4NjE5NzM5NTll%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%27D&btype=a&role=a](https://teams.microsoft.com/l/meetupjoin/19%3ameeting_NmU5MGQ0NDU0ZTdKMi00MzExLWlXmMmEtMjc4NjE5NzM5NTll%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%27D&btype=a&role=a) for virtual access. The public meeting will be held at the Federal Mediation and Conciliation Service located at 250 E St SW, Washington, DC 20219.

**Special Accommodations:** Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give DOI sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Individuals in the United States who are deaf, blind, 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.

**Public Comments During Meeting:** Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Committee during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the

agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Vickie Hanvey listed in the **ADDRESSES** section above.

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.

**Authority:** 5 U.S.C. 10.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[234A2100DD/AAKC001030/  
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### HEARTH Act Approval of Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin Leasing Ordinance

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

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin 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, business, residential, wind and solar, public, religious, educational, recreational, cultural, and other purposes leases without further BIA approval.

**DATES:** BIA issued the approval on March 28, 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](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 Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.

#### 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