

Code	PHAs	Waiver signed
UT016 .....	Housing Authority of Carbon County .....	1/9/2024

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 BILLING CODE 4210–67–P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**HEARTH Act Approval of Bay Mills Indian Community, Michigan, Leasing Ordinance**

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

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Bay Mills Indian Community, Michigan 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 agriculture, business, residential, wind and solar, public, religious, and recreational leases without further BIA approval.

**DATES:** BIA issued the approval on November 12, 2024.

**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 Bay Mills Indian Community, Michigan.

**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 72,447–48, 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 25 CFR part 162.

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 Bay Mills Indian Community, Michigan.

**Wizipan Garriott,**

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

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**Final Environmental Impact Statement for the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon**

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the Coquille Indian Tribe (Tribe), City of Medford (City), Jackson County (County), and the Oregon Department of Transportation (ODOT) serving as cooperating agencies, intends to file a Final Environmental

Impact Statement (FEIS) with the U.S. Environmental Protection Agency (EPA) in connection with the Tribe's application to transfer into trust approximately 2.4 acres for gaming purposes in the City of Medford, Jackson County, Oregon (Medford Site).

**DATES:** The Record of Decision for the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the **Federal Register**. The BIA must receive any comments on the FEIS before that date.

**ADDRESSES:** By mail or hand delivery to: Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Region, 911 NE 11th Avenue, Portland, Oregon 97232. Please include your name, return address, and "FEIS Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project" on the first page of your written comments.

*By email to:* Tobiah Mogavero, NEPA Coordinator, Bureau of Indian Affairs, at: [tobiah.mogavero@bia.gov](mailto:tobiah.mogavero@bia.gov), using "FEIS Comments, Coquille Indian Tribe Fee-to-Trust and Casino Project" as the subject of your email.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tobiah Mogavero, NEPA Coordinator, Bureau of Indian Affairs, Northwest Region, (435) 210–0509, [tobiah.mogavero@bia.gov](mailto:tobiah.mogavero@bia.gov). Information is also available online at <https://coquille-eis.com>.

**SUPPLEMENTARY INFORMATION:** The Notice of Availability (NOA) of the Draft EIS was published by the BIA (87 FR 72505) and EPA (87 FR 72482) in the **Federal Register** on November 25, 2022. The Draft EIS was originally made available for public comment for a 45-day period. However, the BIA extended the public comment period for an additional 45-day period that concluded on February 23, 2023, resulting in a total comment period of 90 days. Virtual public hearings were held on December 15, 2022, and January 31, 2023, to collect verbal comments on the Draft EIS.

**Background**

The following alternatives are considered in the FEIS: (1) Proposed Project; (2) Phoenix Site; (3) Expansion of the Mill Casino; and (4) and No Action/No Development Alternative. The BIA has selected Alternative 1, the Proposed Project, as the Preferred Alternative as discussed in the FEIS.

Environmental issues addressed in the FEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice),

transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

The information and analysis contained in the FEIS, as well as its evaluation and assessment of the Preferred Alternative, will assist the Department in its review of the issues presented in the Tribe's application. Selection of the Preferred Alternative does not indicate the Department's final decision because the Department must complete its review process. The Department's review process consists of (1) issuing the notice of availability of the FEIS; (2) issuing a Record of Decision no sooner than 30 days following publication of a Notice of Availability of the FEIS by the EPA in the **Federal Register**; and (3) transfer of the Medford Site in to trust under the Coquille Restoration Act of 1989, 25 U.S.C. 715 *et. seq.*

*Locations where the FEIS is Available for Review:* The FEIS is available for review at <https://coquille-eis.com>. Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Public Comment Availability:* Comments, including names and addresses of respondents, will be included as part of the administrative record and responses to comments on the Final EIS. 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 in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

**Authority**

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR part 1500 through 1508) and section 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. This notice is also published in accordance with 40 CFR 93.155, which provides reporting