

species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given in **ADDRESSES** by April 27, 2018.

ADDRESSES: *Reviewing Documents:* Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice (see **DATES**): U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

Submitting Comments: If you wish to comment, you may submit comments by any one of the following methods:

- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service's Regional Office (see above).
- *Email:* permitsR4ES@fws.gov.

Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404-679-7097 (telephone) or 404-679-7081 (fax).

SUPPLEMENTARY INFORMATION: We invite review and comment from local, State, and Federal agencies and the public on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. With some exceptions, the ESA prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

Public Availability of Comments

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.

PERMIT APPLICATIONS

Permit application No.	Applicant	Species/Numbers	Location	Activity	Type of take	Permit action
TE 22311A-4	Tennessee Aquarium, Chattanooga, TN.	Blue shiner (<i>Cyprinella caerulea</i>), Amber darter (<i>Percina antesella</i>), Cumberland darter (<i>Etheostoma susanae</i>), Goldline darter (<i>Percina aurolineata</i>), Conasauga logperch (<i>Percina jenkinsi</i>), Snail darter (<i>Percina tanasi</i>), and Laurel dace (<i>Chrosomus saylori</i>).	Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia.	Presence/absence surveys, tissue collection for genetic analysis, and captive propagation research.	Capture, identify, take fin clips, and release all of the identified species, and capture, transport and maintain in captivity up to 10 Conasauga logperch and up to 80 laurel dace.	Renewal and Amendment.

Authority

We provide this notice under section 10(c) of the Act.

Leopoldo Miranda,

Assistant Regional Director, Ecological Services, Southeast Region.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/
A0A501010.999900]

HEARTH Act Approval of Business Leasing Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On December 29, 2017, the Bureau of Indian Affairs (BIA) approved the Torres Martinez Desert Cahuilla Indians leasing regulations under the

HEARTH Act. With this approval, the Tribe is authorized to enter into the following type of leases without BIA approval: Business and other authorized purposes.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS-4642-MIB, 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 (the 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 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's 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 Secretary—Indian Affairs, has approved the tribal regulations for the *Torres Martinez Desert Cahuilla Indians*.

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 72,440, 72,447–48 (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 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.” *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).

Just like BIA’s surface leasing regulations, tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act, NPM–TRUS–29 (effective Jan. 16, 2013) (providing guidance on Federal review process to ensure consistency of proposed tribal regulations with Part 162 regulations and listing required tribal regulatory provisions). 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 *Torres Martinez Desert Cahuilla Indians*.

Dated: December 29, 2017.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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HEARTH Act Approval of Ramona Band of Cahuilla’s Business Site Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On December 29, 2017, the Bureau of Indian Affairs (BIA) approved the Ramona Band of Cahuilla’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 leases for business purposes without further BIA approval.

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

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act of 2012 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 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