

THE HEARTH ACT

(The Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012)

**Bureau of Indian Affairs
Office of Trust Services
Central Office, Division of Real Estate Services**

**Review and Approval Process for Tribal Leasing
Regulations**

The HEARTH Act provides a mechanism for federally-recognized tribes to approve, manage, and enforce leases of their tribal trust and restricted lands for business, residential, agricultural, wind and solar, and other purposes without:

- a lease review by the Bureau of Indian Affairs, or
- lease approval by the Secretary of the Interior

IF:

the tribe's *leasing regulations* have been reviewed by the BIA and the tribe's *leasing regulations* were approved by the Secretary of the Interior prior to execution of the lease.

Note: Leases and their related amendments, assignments, etc., that have been approved under 25 CFR Part 162 will continue to be subject to Part 162 and are not governed by a tribe's leasing regulations under the HEARTH Act.

TRIBAL LEASING REGULATIONS MUST MEET MINIMUM REQUIREMENTS TO BE ELIGIBLE FOR SECRETARIAL APPROVAL:

- Consistency with BIA's leasing regulations at 25 CFR Part 162 (*not a meets & exceeds standard*).
- Provide for an **environmental review process** that includes
 1. Identification and evaluation of the **significant effects** of the proposed lease on the environment (*the tribe may define the terms "environment," "significant effects," and "public"*);
 2. A period for **public notice and comment** related to any significant impacts of the proposed lease on the environment;
 3. The **tribe's response to relevant and substantive public comments** on environmental impacts, prior to tribal approval of the lease.

MINIMUM REQUIREMENTS FOR TRIBAL LEASING REGULATIONS (continued):

- May only authorize the following **lease types and maximum terms**:
 - Business, agricultural, and Wind and solar lease (WSR): 25 years but may include option to renew for up to 2 additional terms, at no more than 25 years each (total maximum lease term of 75 years).
 - Wind Energy Evaluation leases (WEEL): 3-year term and one option to renew for 3 years. WEEL's may convert to WSR's if expressly stated in the lease.
 - Residential, public, religious, educational, or recreational leases: a single term of 75 years (may be less).

Note: Other lease terms that have been recognized for a tribe under 25 U.S.C. § 415 are not applicable in conjunction with tribal leasing regulations issued under the HEARTH Act.

- Must only apply to **trust and/or restricted land that is 100% owned by a tribe, not to** lands held in trust for individual Indian landowners, fee lands or fractionated interests.
- May address tribal authority to approve **leasehold mortgages**, but may **not** mortgages of tribal land.
- Must **not** authorize exploration, development, or extraction of any mineral resources.

POTENTIAL BENEFITS TO TRIBES IMPLEMENTING LEASING REGULATIONS:

- **Economic Development - A Streamlined Leasing Process.**
 - May significantly reduce the time to execute and approve leases compared to existing BIA processes.
 - Timely execution of leases may encourage potential lessees to invest and develop in tribal communities.

- **Tribal Land Management -**
 - Tribes may enact regulations that are tailored to the unique needs of the tribe's community (for example, housing).

- **Access to 25 CFR Part 162 –**
 - If a tribe with leasing regulations under the HEARTH Act believes a particular lease would be better supported under 25 CFR Part 162, the lease may be submitted for BIA review and Secretarial approval under the CFR.
 - Leases approved under Part 162, and any amendments, assignments, etc., will remain subject to Part 162 until lease termination or expiration.
 - During the effective lease term, a 162 lease may not be converted into a HEARTH Act lease and vice versa.

IMPLEMENTATION OF TRIBAL LEASING REGULATIONS: Factors to Consider

- **Funding**

- Added costs, or the diminishment of existing funds, associated with undertaking full administration and management of leasing.

- **The Environmental Review Process**

- Tribes may request, and the Secretary *may* provide, technical support for development of an environmental review process. However, no requirement for the BIA to perform environmental reviews after approval of leasing regulations.

- **Existing and Future Leases**

- Leases already in place (executed and approved under 25 CFR 162) are still subject to BIA's leasing regulations.
- Approval of Hearth Act Regulations does not preclude Tribes from electing Secretarial Approval process under 25 CFR 162.

- **Lease Enforcement (Violations/Cancellation)**

- Upon reasonable notice from the Tribe, the Secretary *may* enforce provisions of or cancel a lease, however, it is anticipated that Tribes will manage all aspects of those leases approved under their tribal regulations.

- **Assertions of a Tribe's Non-Compliance With Its Regulations**

- After exhausting tribal remedies, an interested party may petition the Secretary to review a tribe's compliance with its own regulations.

● **THREE BASIC STEPS FOR REVIEW AND APPROVAL:**

- Initial Submission
- Review (including any modifications and re-submission)
- Approval by the Secretary of the Interior



INITIAL SUBMISSION:

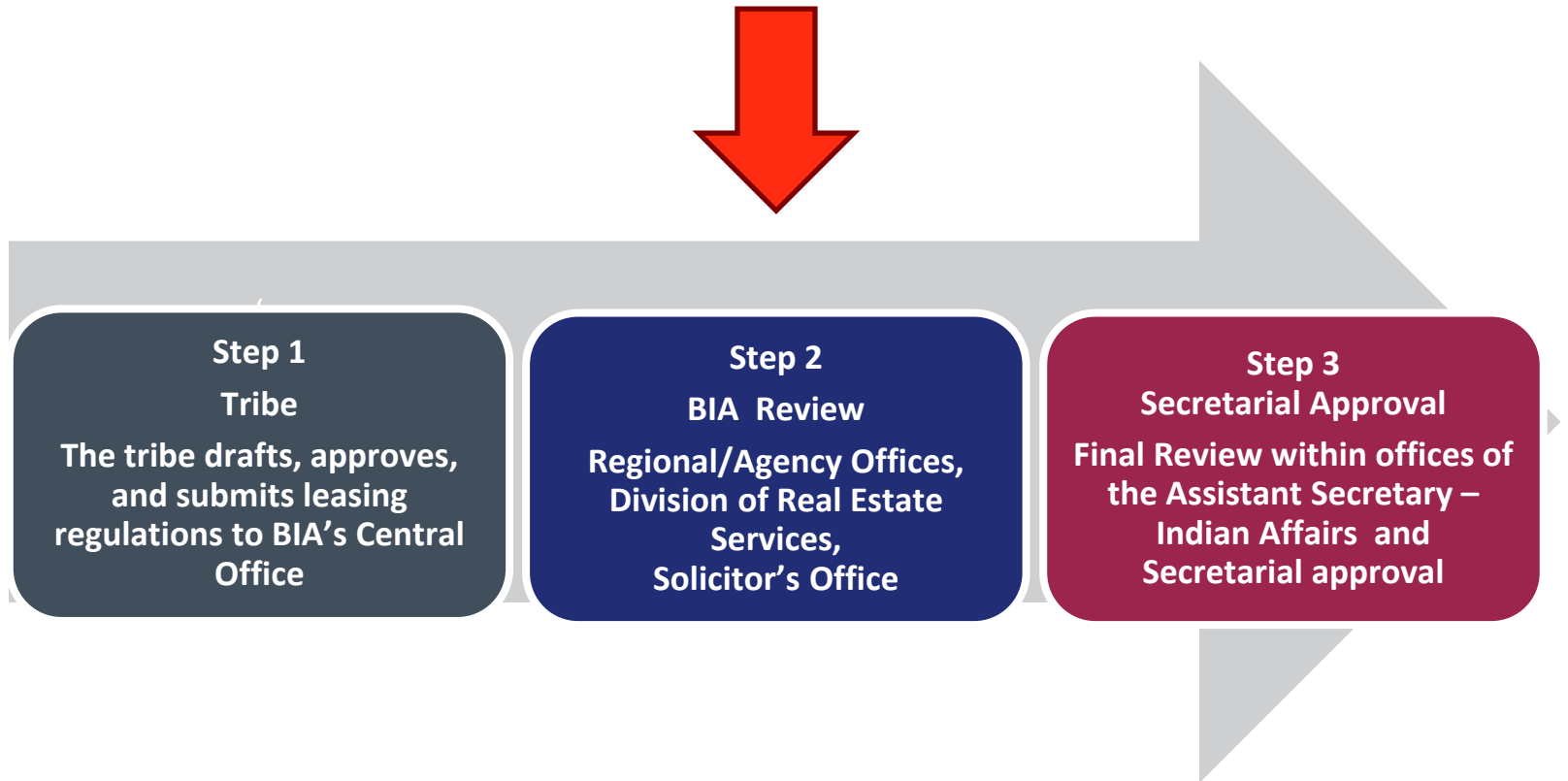
The Tribe must submit a complete HEARTH Act Leasing Regulation package to the BIA Central Office, Office of Trust Services. The Tribe should **not** submit to the Agency or Region.

What is needed?

- An original cover letter that includes: 1) A request for review and approval of the regulations under the HEARTH Act; 2) Contact information for parties, with decision-making authority regarding the regulations, i.e., Tribal officers, legal counsel; and 3) Any special circumstances regarding submission of the regulations (an urgent need for approval; a unique provision included in the regulations, etc.).
- One original of the regulations, approved by the Tribe and signed by the authorized Tribal parties, and a Tribal Resolution authorizing the regulation must be an original and not a copy. If the Tribe submits a copy or the submission is incomplete, it will be considered as unofficial and not be reviewed or, forwarded for Decision until an original fully executed regulation and Tribal Resolution is received.
- Mailed to: Department of the Interior, Bureau of Indian Affairs.

**Ms. Carla Clark,
Acting Chief, Division of Real Estate Services
BIA-Office of Trust Services
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- **STEP 2: BIA REVIEW OF LEASING REGULATIONS**



Legal Review of Regulations Office of the Solicitor (SOL)

- The Solicitors Office will perform a legal sufficiency review of the Tribal HEARTH Act regulations to ensure compliance with the statute and regulations.
- The Tribal HEARTH Act regulations must be consistent with the 25 C.F.R. 162 leasing regulations. The tribal provisions and definitions do not need to be verbatim to the 162 regulations.
- The Solicitors work with the Tribe to develop Tribal HEARTH Act regulations that best fit the individual Indian Community.
- There are 3 categories of comments:
 - 1) “Required” means the provision must be in the Tribe’s HEARTH Act regulations;
 - 2) “Strongly Recommended” means the provision is not mandatory but is recommended to add flexibility or transparency to the Tribe’s HEARTH Act regulations; and
 - 3) “Discussion” means we want to discuss to better understand the meaning or intention of the provision.
- See the Legal Sufficiency Checklist for mandatory and recommended provisions.
- Feel free to contact the Solicitors for any legal questions regarding the development of Tribal HEARTH Act regulations.

- **STEP 3: Secretarial Approval**



Secretarial Approval

- The surnaming and approval process begins when the Tribe's final submission package is received at Central Office.
- Once received, the final leasing ordinance will be compared to the agreed upon word version to ensure no other changes were made.
- The HEARTH Act Coordinator will then create the necessary documents that will be uploaded into the Department's Data Tracking System (DTS) and routed for surname, review and approval.
- Offices within the Department that surname/review:
 - 1) Office of Trust Services (OTS);
 - 2) Office of the Solicitor (SOL);
 - 3) Director, Bureau of Indian Affairs (DBIA);
 - 4) Executive Office of the Secretary (ESIA);
 - 5) AS-IA Counselor;
 - 6) Deputy Assistant Secretary - Policy & Economic Development (DASPED);
 - 7) Principal Deputy Assistant Secretary (PDASIA);
 - 8) Assistant Secretary Indian Affairs (AS-IA);
 - 9) Office of Executive Secretary (SIO-REGS);
 - 10) Office of Regulatory and Collaborative Action (RACA);

THE BIA'S ROLE AFTER TRIBAL LEASING REGULATIONS ARE APPROVED:

- **Lease Review:** The **BIA does not review leases** executed under a tribe's HEARTH Act leasing regulations for compliance under 25 CFR 162.
- **Approval:** The Secretary **does not** approve lease documents executed under a tribe's HEARTH Act leasing regulations. Lease documents are approved by tribal authority and according to the tribe's HEARTH Act regulations.
- **Recording:** Per 25 U.S.C. 415(h)(6), Tribes are to provide BIA with a **copy** of all lease documents (lease, amendment, assignment, leasehold mortgage, renewals and subleases) for recordation.
 - The BIA (or tribe if it has contracted or compacted the related leasing authority) is responsible for encoding lease documents. In preparation for encoding, a cursory review should be done before entry into the TAAMS system.
 - LTRO is responsible for recording lease documents. The BIA or Tribe, as described above, is responsible for submitting HEARTH Act leases and lease documents to LTRO for recordation purposes after they've been entered into the TAAMS system.
- **Lease Enforcement (Violations/Cancellation)**
 - Under HEARTH Act, tribes will manage all aspects of those leases approved under their tribal regulations. Lessee's will be subject to tribal laws.
 - Upon reasonable notice from the Tribe, the Secretary may enforce provisions of or cancel a lease.
 - Situations may arise that are outside of the approved regulations (i.e., trespass resulting from an unapproved right-of-way) where it is still under BIA's jurisdiction to act.
- **Tribal Compliance With Regulations**
 - After exhausting tribal remedies, an interested party (not the BIA) may petition the Secretary to review a tribe's compliance with its own regulations.



Feel free to contact the Acting Division Chief, Carla Clark or Sharon Kidman, HEARTH Act Coordinator, with any questions.

Email: codres@bia.gov

Thank You